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December 15, 2014

VIA HAND DELIVERY

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **MUR 6869**

Dear Sir/Madam:

We serve as counsel for the Commission on Presidential Debates (the "CPD") and the individual respondents in connection with MUR 6869. On behalf of all respondents, we submit this response to the Complaint filed by Level the Playing Field ("LTPF") and Peter Ackerman (collectively, Complainants).

CPD is a private, nonpartisan 501(c)(3) organization that receives no government or party funding. CPD's primary mission is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. To that end, CPD has sponsored general election presidential debates in every election since 1988. Although its plans for 2016 are in the developmental stage, it looks forward to bringing high quality, educational debates to the electorate in 2016.

The Complainants in MUR 6869 present arguments that the Federal Election Commission (the "FEC" or the "Commission") has considered and rejected on multiple occasions. They urge that (1) CPD is not non-partisan and, therefore, is not a qualified "staging organization" under applicable FEC regulations, and (2) CPD fails to apply pre-established, objective candidate selection criteria in determining eligibility to participate in the debates it sponsors because it relies on public opinion polling as a criterion for inclusion. Neither assertion is correct, as the FEC has previously ruled on multiple occasions. *See, e.g.,* MURs 4987, 5004, 5021, 5207, 5378, 5414 and 5530. *See also Buchanan v. FEC*, 112 F.Supp. 2d 58,74-75 (D.D.C.

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2000), *aff'd in part*, No. 00-5337 (D.C.Cir. September 29, 2000) ("*Buchanan*"); *Natural Law Party v. FEC*, Civ. Action No. 00-02138 (D.D.C. September 21, 2000), *aff'd in part*, No. 00-5338 (D.C. Cir September 29, 2000).

In light of the redundant nature of the Complaint, in this letter, CPD provides only a summary of the principal reasons that the Complaint is without merit. CPD submits detailed declarations herewith that contain additional information on the background of the CPD, its operations and the great attention it has brought over the years to the important task of determining to whom invitations to debate should be extended. Upon request, CPD would be happy to submit additional information.

Background

General election debates between and among the leading candidates for the office of President of the United States are not required or assured. After the Kennedy-Nixon debates in 1960, there were no such debates in 1964, 1968 and 1972. There were debates in 1976, 1980 and 1984, but they were hastily arranged after negotiations between the candidates that left many uncertain whether there would be any debates at all. The 1984 experience, in particular, reinforced a mounting concern that, in any given election, voters could be deprived of the opportunity to observe a debate among the leading candidates for President.¹

Following the 1984 election, therefore, two distinguished national organizations, the Georgetown University Center for Strategic and International Studies and the Harvard University Institute of Politics, conducted separate, detailed studies of the presidential election process generally, and of the role of debates in that process specifically. The reports produced by these two independent inquiries found, *inter alia*, that: (1) debates are an integral and enhancing part of the process for selecting presidential candidates; (2) American voters expect debates between the leading candidates for President; and (3) debates among those candidates should become institutionalized as a permanent part of the electoral process. Both the Georgetown and Harvard reports recommended that the two major political parties endorse a mechanism designed to ensure, to the greatest extent possible, that presidential debates between the leading candidates be made a permanent part of the electoral process. Declaration of Janet H. Brown, attached as Ex. 1., at ¶ 10. (Hereinafter, "Brown Decl.")

In response to the Harvard and Georgetown studies, the then-chairmen of the Democratic and Republican National Committees, Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr., respectively, jointly supported creation of the independent CPD. *Id.* ¶ 11. The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for

¹ See generally N. Minow & C. Sloan, *For Great Debates* 21-39 (1987); Commission on National Elections, *Electing the President: A Program for Reform* 41-42 (R.E. Hunter ed. 1986); Swerdlow, *The Strange -- and Sometimes Surprising -- History of Presidential Debates in America*, in *Presidential Debates 1988 and Beyond* 10-16 (J. Swerdlow ed. 1987).

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President of the United States." Id. ¶ 3. The CPD has been granted tax-exempt status by the Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code. Id.

The CPD Board of Directors presently is jointly chaired by Frank J. Fahrenkopf, Jr. and Michael McCurry, who succeeded CPD co-founder Paul Kirk. in 2009. Id. ¶ 6. Although at the time the CPD was formed, Messrs. Kirk and Fahrenkopf served, respectively, as chairmen of the Democratic National Committee (DNC) and Republican National Committee (RNC), their terms ended in 1989. Id. ¶ 11. In the intervening 25 years, no sitting officer of either major party has had any affiliation with the CPD. Id. CPD Board members come from a variety of backgrounds, and while some are identified in one fashion or another with one or the other of the major parties (as are most civic leaders in this country), that certainly is not the case for all of the CPD Board members. Id. ¶ 12. In addition to the Co-Chairs, the current Board consists of the following distinguished Americans:

Howard G. Buffett, *Chairman and CEO, The Howard G. Buffett Foundation*

John C. Danforth, *Former U.S. Senator*

Mitchell E. Daniels, Jr., *President, Purdue University*

Charles Gibson, *Former Anchor, ABC World News with Charles Gibson*

John Griffen, *Managing Director, Allen & Company LLC*

Jane Harman, *Director, President and CEO, Woodrow Wilson International Center for Scholars*

Antonia Hernandez, *President and CEO, California Community Foundation*

Reverend John I. Jenkins, *President, University of Notre Dame*

Newton N. Minow, *Senior Counsel, Sidley Austin LLP*

Leon E. Panetta, *Chairman, Panetta Institute for Public Policy*

Richard D. Parsons, *Senior Advisor, Providence Equity Partners LLC*

Dorothy S. Ridings, *Former President, the League of Women Voters and former President and CEO, Council on Foundations*

Alan K. Simpson, *Former U.S. Senator*

Olympia Snowe, *Former U.S. Senator*

Shirley M. Tilghman, *Former President, Princeton University*

The CPD receives no funding from the government or any political party. Id. ¶ 5. The CPD obtains the funds required to produce its debates every four years and to support its ongoing

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voter education activities from the communities that host the debates and, to a lesser extent, from corporate, foundation and private donors. Id. Donors have no input into the management of any of the CPD's activities and have no input into the process by which the CPD selects debate participants. Id.

The CPD sponsored two of the three presidential debates in 1988 and has sponsored every general election presidential debate in each election cycle since 1992. Id. ¶¶ 19-29. It also has sponsored every general election vice presidential debate since 1988. Id. ¶ 4. In each election cycle, the CPD's debates have been viewed by tens of millions of Americans, and have served a valuable voter-education function. Id. In addition, the CPD has undertaken a number of broad-based, nonpartisan voter education projects designed to enhance the educational value of the debates themselves, and is presently considering a number of projects to further its mission. Id. ¶¶ 40-41.

Although the CPD plans to sponsor debates in 2016, it has not yet announced its plans, nor has it announced its candidate selection criteria. Id. ¶ 36. We review additional aspects of the CPD's history and operations below, in the course of responding to Complainants' principal charges.

CPD is a Proper Staging Organization

In order to be eligible to conduct debates in accordance with applicable FEC regulations, the sponsor (referred to as a "staging organization" in the regulations), must be either (a) a non-profit, tax exempt organization under section 501(c)(3) or (c)(4) of the tax code that does not "endorse, support, or oppose political candidates or political parties," or (b) a *bona fide* media organization as detailed in the regulations. 110.13(a). CPD is a 501(c)(3) tax exempt organization that does not "endorse, support, or oppose political candidates or political parties." Brown Decl.¶ 3. Complainants dispute this, but their argument is without merit for multiple reasons.

First, Complainants cite no evidence whatsoever that CPD endorses, supports or opposes political candidates, and they cannot. The CPD is an independent organization that is not controlled by any political party or outside organization. Id. ¶¶ 3-5. It does not endorse, support or oppose political candidates or parties. Id. It adopts nonpartisan candidate selection criteria well in advance of each general election debate season and it adopts and applies those criteria solely to advance the educational purposes of its debates and not to advance or oppose any candidate or political party. Id. ¶ 36.

Second, in the absence of any evidence that CPD is not a proper staging organization, Complainants argue that CPD is disqualified by (1) its origins, which date back to the 1980s, which contain isolated references to the organization as bipartisan rather than non partisan, and (2) various ways in which CPD directors have participated over the years, directly or indirectly, in the political process separate from their role with the CPD. The FEC properly has rejected

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such argument by innuendo in the past. For example in connection with MUR 5414, the First General Counsel's report, subsequently adopted by the Commission, stated in connection with similar arguments as follows:

In MURs 4987, 5004, and 5021, complainants allege that the CPD and its board of directors are bipartisan, not nonpartisan. In support, they stated that the CPD was created by the former chairman of the DNC and RNC to allow the major parties to control the presidential and vice presidential debates and to promote their candidates in violation of 11. C.F.R. § 110.13 (a). . . . In all these matters, the Commission found no reason to believe that the CPD had violated the Act. In subsequent section 437g(a)(8) dismissal suits brought by some of these MUR complainants, courts found for the Commission.² (footnote omitted) Based on this precedent, these arguments should be rejected.

Moreover, in a passage that is even more true today, the Report stated that "[n]ot only did challenges based on Fahrenkopf's and Kirk's leadership of the CPD not carry the day when they were fresh, but as neither man has been a party official since 1989, the passage of time has rendered such assertions less persuasive." *Id.* Of course, such a challenge is even more stale another ten years on, and Paul Kirk concluded his service as Co-Chair of the CPD some five years ago. Brown Decl. at ¶ 11. Likewise, the fact that CPD Board members have participated in various ways in our nation's political processes (for example, by expressing at one time or another *personal* support for varying candidates) is not evidence that the major parties (or any outside entities) control the CPD's decision-making or that CPD "endorses, supports, or opposes political candidates or political parties."³

Third, Complainants also urge that memoranda of understanding ("MOU") between the major party candidates constitutes evidence that the CPD is not a proper staging organization. The fact that such MOU have been entered into by the major party candidates (but not the CPD) is well known and the Commission previously has rejected the assertion that the MOU somehow demonstrate that CPD is not a proper staging organization. See MUR 5414. Indeed, to the extent that the assertion is that through their MOUs the major party candidates actually control the CPD's candidate selection, the assertion is frivolous. The CPD announces its criteria well in advance of even the nomination of the major party candidates, Brown Decl. at ¶ 36, and the transparency of the CPD's criteria allows anyone who wishes to confirm the CPD's adherence to its published criteria. Further, every such MOU since 2000 has stated that the major party

² The footnote accompanying the quoted text noted that in *Buchanan*, the court upheld the Commission's determination that CPD was a proper staging organization and rejected the same arguments advanced by Complainants herein.

³ Although not required by FEC regulations, CPD's directors adhere to a longstanding practice of not serving in an official capacity with any political party or campaign while serving on the CPD board. Brown Decl. ¶ 12.

candidates will adhere to CPD's decisions concerning candidate selection, not the other way around. *Id.* ¶ 38.

Of course, Complainants' attack on CPD's eligibility to serve as a staging organization is actually a surrogate for attacking the CPD's candidate selection criteria. However, those carefully adopted and applied criteria have repeatedly been found by the FEC to be in full compliance with applicable regulations, as discussed below.

The CPD's Non-Partisan Candidate Selection Criteria Comply with FEC Regulations.

The FEC's regulations, found at 11 C.F.R. § 110.13 (c), as amended in 1995, provide in pertinent part as follows:

Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

As noted, CPD has not yet adopted Criteria for the 2016 debates. The CPD's 2012 Non-Partisan Candidate Selection Criteria are attached as Tab E to the Brown Declaration. The 2012 Criteria document explains:

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In each of the last six elections, there were scores of declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2012 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

The three Criteria can be summarized as follows: (1) satisfaction of the eligibility requirements to hold the Office of President of the United States, as set forth in Article II, Section 1 of the Constitution, (2) qualification to appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority, and (3) a level of support of at

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least 15 percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination. The Complainants' attack is limited to the third criterion.

The CPD's candidate selection criteria have been the subject of multiple prior challenges and rulings by the FEC rejecting those challenges. In light of the fact that the primary issues raised by Complainants have been fully presented to and resolved by the FEC on multiple occasions, we simply note as follows.

First, the CPD has gone to great lengths in the adoption and application of its candidate selection criteria to ensure that it has been in full compliance with FEC regulations. From 1988 through the 1996 election, CPD employed multi-faceted criteria to identify the leading candidates to be invited for inclusion in its debates. Beginning in 2000 and continuing through the 2012 election, CPD has employed the streamlined criteria discussed above, including the 15 percent threshold (referred to herein collectively as the "2000 Criteria"). We provide a detailed discussion of the criteria, their evolution over time and the rationale behind the criteria in the attached Declaration of Janet Brown, ¶¶ 13-35 (Ex. 1). The Criteria are also addressed in the Declaration of Dr. Frank Newport, Editor-in-Chief of Gallup, attached as Ex. 2 (hereinafter, "Newport Decl.").

Second, the FEC has considered both the pre-and post 2000 Criteria. In MURs 4451 and 4473, the FEC considered and discussed at length the multi-faceted selection criteria employed by the CPD prior to 2000. The FEC concluded that: "The CPD debate criteria contain exactly the sort of structure and objectivity the Commission had in mind when it approved the debate regulations in 1995." See Statement of Reasons at 7, attached as Ex. 3.

In MURs 4987 and 5004, the FEC unanimously rejected an attack on CPD's candidate selection criteria for 2000 (which, as noted, are substantially the same as those used in 2004, 2008 and 2012). A copy of the First General Counsel's Report on those matters is attached as Ex. 4. In that report, which includes a detailed review and discussion of the issues presented, the General Counsel concluded (1) "the CPD satisfies the requirement of a staging organization that it not endorse, support or oppose political candidates or political parties," and (2) "CPD's criteria for participation in the candidate debates appear to be pre-established, objective criteria as required by 11 C.F.R. §110.13(c), and not designed to result in the selection of certain pre-chosen participants." Id. at 15. The Report explained:

It should be noted that the CPD used a different set of candidate selection criteria for the 1996 debates than it has proposed for the 2000 debates. However, the CPD's candidate selection criteria for 2000 appear to be even more objective than the 1996 criteria. In 1996, the CPD's candidate selection criteria were: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. With

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respect to signs of national newsworthiness and competitiveness, the CPD listed factors, such as the professional opinions of Washington bureau chiefs of major newspapers, news magazines and broadcast networks; the opinions of professional campaign managers and pollsters not employed by the candidates; the opinions of representative political scientists specializing in electoral politics; a comparison of the level of coverage on front pages of newspapers and exposure on network telecasts; and published views of prominent political commentators. The CPD's candidate selection criteria for 2000, which consist of constitutional eligibility, ballot access, and a level of electoral support of 15% of the national electorate based upon the average of polls conducted by five major polling organizations, appear to be relatively easier to determine which candidates will qualify, and appear to be even more objective than the 1996 candidate selection criteria. Given this, and the fact that the Commission did not find a problem with the 1996 criteria, it appears that the CPD's candidate selection criteria for participation in the 2000 general election debates are in accordance with the requirements of 11 C.F.R. § 110.13.

The FEC's decision in MURs 4987 and 5004, finding no reason to believe a violation had occurred, was affirmed by both the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. See Buchanan v. Federal Election Comm'n, 112 F. Supp. 2d 58, 2000 U.S. Dist. LEXIS 13448 (D.D.C. Sept. 14, 2000), aff'd, No. 00-5337 (D.C. Cir. Sept. 29, 2000), Natural Law Party of the United States of America v. Federal Election Comm'n, Civ. Action No. 00CV02138 (D.D.C. Sept. 21, 2000), aff'd, No. 00-5338 (D.C. Cir. Sept. 29, 2000).

Third, notwithstanding these rulings, in 2002, 2003, 2004, and 2005, several individuals and organizations filed additional complaints objecting to the CPD's candidate selection criteria, and all met the same fate. The FEC repeatedly found no evidence of any political party involvement in the CPD's operations; no evidence of political party input in the development of the CPD's candidate selection criteria; and that the selection criteria was objective and in compliance with the Federal Election Campaign Act and with the FEC's regulations. *See* MURs 5207, 5378, 5414, and 5530.

Fourth, Complainants emphasize perceived shortcomings in the use of public opinion polling as part of the candidate selection criteria. The FEC has made clear, as did the U.S. District Court for the District of Columbia, that polling or other assessments of a candidate's chances of winning are permissible factors to consider in setting candidate selection criteria. *See, e.g.*, MUR 5530, at 6 ("In MURs 4987, 5004 and 5021 (Buchanan) the Commission specifically considered the selection criteria the CPD adopted for the 2000 presidential and vice presidential debates and approved its use of 'indicators of electoral support' as one of those criteria.") (citing *Buchanan v. FEC*, 112 F. Supp. 2d 58, 74 (D.D.C. 2000)). *See also* MURs 4451 and 4473, Statement of Reasons, at 8 (Ex. 3); MUR 4987, at 16 ("[T]he Commission noted in MURs 4451

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and 4473 that it declined to preclude the use of polling or 'other assessments of a candidate's chances of winning the nomination or election' when promulgating 11 C.F.R. § 110.130.").

Fifth, the FEC's repeated rejection of attacks on the CPD's selection criteria reflects the "broad discretion afforded to debate sponsors in determining the criteria for participant selection." MUR 4987, at 16 (citing 60 Fed. Reg. 64,262 (Dec. 14, 1995)). The FEC has stated that "[t]he choice of which objective criteria to use is largely left to the discretion of the staging organization." 60 Fed. Reg. 64,262 (Dec. 14, 1995). The Commission noted that "questions can be raised regarding any candidate assessment criterion and absent *specific evidence that a candidate assessment criterion was 'fixed' or arranged in some manner as to guarantee a preordained result*, we are not prepared to look behind and investigate every application of a candidate assessment criterion." MURs 4451 and 4473, at 9 (Emphasis added). The CPD seeks to educate voters by "bring[ing] before the American people, in a debate, the leading candidates for the Presidency and Vice-Presidency." Brown Decl. ¶ 30. The CPD has reasonably concluded that limiting debate participation in the final stages of a long general election campaign to those who have achieved a level of support of at least 15 percent advances the educational purposes for which it holds debates. Contrary to Complainants' thesis, the CPD is not *required* to structure its debates to serve as a launching pad for presidential hopefuls seeking exposure.

Sixth, the Complaint relies heavily on the assumption that the 15 percent level of support criterion is too onerous for third party and independent candidates, due to the costs of campaigns and other factors unrelated to any of the CPD's actions. Notably, this is the same level of support that had been required by the League of Women Voters, which Complainants describe as as a "strictly nonpartisan organization," whose "dedication to nonpartisanship and voter education created conflict with the major party candidates . . ." Compl. at 16-17. *See* Brown Decl. ¶ 33.⁴ As noted, the FEC has repeatedly found the 2000 Criteria to be in accord with the FEC's regulations, and in *Buchanan*, the Court found that the "15% support level set by the CPD" was not inconsistent with the FEC's regulations and affirmed the FEC's dismissal of the complaint. 112 F.Supp. at 74-76.

⁴ Complainants seek to sidestep the inconvenient fact that history affords multiple examples of third party candidates achieving levels of support that reached or exceeded 15 percent. Compl. at 45-46; *see* Brown Decl. ¶ 33. Complainants urge, based on their counterintuitive surmise, that the media and campaign finance world has changed such that these prior candidates' success is unachievable today. Not only is this conclusion unsupported, it defies logic. The last two presidential elections in particular provide prime examples of how technology has allowed candidates to reach a larger group of potential voters without expending the resources required in the pre-digital age. A number of political observers noted, for instance, that social media allowed campaigns to reach a large number of potential voters at a fraction of the cost of traditional paid advertising, and to "organize supporters in a way that would have in the past required an army of volunteers and paid organizers on the ground." *See, e.g.,* Clair Cain Miller, *How Obama's Internet Campaign Changed Politics*, N.Y. TIMES, Nov. 7, 2008; Derek Prall, *The Social Soapbox, How social media and data analytics are helping grassroots candidates gain legitimacy*, Am. City & Cnty., Oct. 22, 2014 (discussing independent mayoral candidate, Victoria Provenza's, use of social media to "move from obscurity to contender.").

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Seventh, Complainants' various cost comparisons designed to advance their burdensome argument are suspect comparing as they do the estimated costs for a wholly unknown unaffiliated candidate to achieve a stated level of name recognition, on the one hand, with expenditures by candidates who sought but failed to win a major party nomination (*i.e.*, Messrs. Cain and Santorum), on the other. The point of this comparison is unclear for multiple reasons, including that these failed candidates were *not* invited to participate in debates sponsored by CPD. Also flawed are Complainants' comparisons of their fictional wholly unknown candidate to the expenditures in a *single* campaign by a successful candidate for a major party nomination (*i.e.*, Mr. Romney) while ignoring, for example, that same candidate's expenditures in prior campaigns for President and other high profile offices that surely contribute to the candidate's name recognition and popular support.

In any event, the CPD has no control over the cost of campaigning or advertising, and it is not required to abandon its educational mission to further the partisan goals of Complainants.⁵ Whatever concerns Complainants may have about the cost of launching a competitive presidential election bid, those concerns do not translate into a legitimate attack on the legality of the candidate selection criteria CPD has employed to the advance the voter education purposes for which it sponsors debates in the final weeks of a long campaign.

Eighth, relying entirely on bald speculation, Complainants suggest that the selection and timing of polls used to assess whether a candidate meets the 15 percent threshold *could* be manipulated to achieve particular results. Notably, Complainants have provided no evidence of any such manipulation. They do not (and cannot) point to a single candidate who should have received an invitation but did not due to the poll selection; nor do they identify any polls indicating that a third-party or independent candidate actually met the 15 percent threshold. Moreover, CPD has been extraordinarily careful in how it selects and uses polling data. Since 2000, CPD has relied on the expertise of Dr. Frank Newport, Editor-in-Chief of Gallup for the past 24 years, to assist it in applying its polling-based criteria. Newport Decl. ¶¶ 1, 7-8.⁶

Ninth, no candidate selection criterion that limits the number of debate participants is immune to criticism. That includes the two proposed alternative criteria referenced in the Complaint: (1) extending invitations to candidates that qualify for federal matching funds or that have raised a specific sum in campaign contributions; and (2) LTPF's own proposal, extending

⁵ Complainants rely heavily on Douglas Schoen's purported expert report. For the reasons noted in text, that report does not support the result Complainants seek. Accordingly, CPD does not address herein what appear to be numerous flaws with the Schoen analysis.

⁶ Concerns about the manipulation of polls are particularly exaggerated here as the CPD, acting on Dr. Newport's analysis, has relied largely on the same polls since implementing the 15 percent threshold in 2000, Newport Decl. ¶¶ 9-13, and Complainants have not presented any evidence showing that the independent polling organizations are biased toward any particular candidates. See *Buchanan*, 112 F. Supp. at 76 ([W]ithout at least some evidence that the independent pollsters have an incentive to rig the process . . . I cannot conclude that the FEC's finding of objectivity was unreasonable.").

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an invitation to the third-party or independent candidate who gathered the most signatures during the ballot access process, Compl. at 50.

Both approaches referred to by Complainants run the risk of placing the partisan interests of minor party candidates above the interest of the electorate in hearing the leading candidates debate. Complainants ignore the fact that a sponsor of general election debates that hopes to provide the electorate with a debate that includes the leading candidates faces a difficult task: to be inclusive enough to invite each of those candidates who genuinely qualify as a leading candidate, but not so inclusive that the candidates in whom the electorate is most interested refuse to participate. Candidates for federal office are not required to debate. As the United States Court of Appeals for the District of Columbia Circuit has recognized in the context of litigation over the 1988 presidential debates, it is speculative at best to assume that the leading candidates would agree to share the stage with candidates enjoying only scant public support. *Fulani v. Brady*, 935 F.2d 1324, 1329 (D.C. Cir. 1991).

Further, even if the leading candidates chose to participate, the selection criteria must avoid the risk of creating crowded debate stages in which the educational value of the debate is hindered by the sheer number of speakers. This problem is inherent in an approach that does not condition debate participation on the meaningful demonstration of significant public interest in a campaign.

As a candidate selection criterion, qualification for candidate matching funds, as referred to by Complainants, is both over and under-inclusive. It relies entirely on the candidate's performance in the previous election. It necessarily excludes up and coming candidates who did not receive 5 percent of the popular vote in the previous election, but whose stock has since risen, and it excludes entirely new party candidates who did not participate in the prior election. At the same time, this criterion would include candidates who did receive at least 5 percent of the popular vote in the previous election, but have little support and no chance of winning the next election. In other words, qualification for matching funds as a candidate selection criterion would rely on performance from previous elections in selecting debate participants, while the CPD's criteria assesses current electoral support.

The number of signatures obtained during the ballot access process is a particularly flawed predictor of a candidate's electoral support or potential. Unlike a public opinion poll, a signature obtained in the ballot access process does not necessarily express any preference for one candidate over another. Also unlike voting (and, by extension, polls measuring how one would vote) there is no electoral prize for obtaining the most signatures in the ballot access process. The goal is to meet and surpass the threshold; beyond that, candidates have no incentive to obtain the additional signatures that they may need to finish with the highest total. A prudent candidate may decide to preserve his or her resources for other uses that benefit the campaign. Moreover, LTPF's proposed April 30 deadline is puzzling as signature filing deadlines vary across states, many of them falling well after April of the election year. The number of signatures gathered by April, therefore, says nothing about a candidate's support, nor is it

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indicative of the total number of signatures that a candidate will collect at the end of the ballot access process. Undoubtedly, another independent or third party candidate could also argue that this proposed rule favors the most well-known third parties, and operates to exclude new party or independent candidates who lack the resources or recognition to obtain the highest number of signatures or to do so as early as Complainants propose.

* * *

Realizing that no candidate selection criterion is immune to criticism, the FEC—through its regulations—has conferred broad discretion on debate sponsors to determine candidate selection criteria. CPD has approached this issue with great care over the years. The FEC has determined repeatedly—and courts have affirmed—that the CPD is an appropriate staging organization and that the CPD's 2000 Candidate Selection Criteria are in compliance with applicable FEC regulations.

Accordingly, the CPD respectfully submits that the Complaint should be dismissed. If we can provide any additional information, please do not hesitate to let us know.

Respectfully submitted,

Loss, Judge & Ward, L.L.P.

By


Lewis K. Loss

Attachments

cc: Jeff S. Jordan, Esq. (w/attachments)
Supervisory Attorney, Central Enforcement Docket
Janet H. Brown (w/attachments)

OPPOSITION TO COMPLAINT
INDEX OF EXHIBITS

Exhibit 1: Declaration of Janet H. Brown

TAB A September 17, 1996 Letter from Advisory
Committee on Candidate Selection

TAB B 2000 Candidate Selection Criteria

TAB C 2004 Candidate Selection Criteria

TAB D 2008 Candidate Selection Criteria

TAB E 2012 Candidate Selection Criteria

TAB F 2000 Memorandum of Understanding

TAB G 2004 Memorandum of Understanding

TAB H 2008 Memorandum of Understanding

TAB I 2012 Memorandum of Understanding

Exhibit 2: Declaration of Frank Newport

Exhibit 3: MURs 4451 and 4473 – Statement of Reasons

Exhibit 4: MURs 4987 and 5004 – First General Counsel's Report

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EXHIBIT 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	MUR 6869
The Commission on Presidential Debates, et al.	Declaration of Janet H. Brown in Support of the Commission on Presidential Debates' Opposition to Level the Playing Field and Peter Ackerman's Complaint.

I, Janet H. Brown, Executive Director of the Commission on Presidential Debates ("CPD"), give this declaration based on personal knowledge.

Background

1. I have been the Executive Director of the CPD since March 1987. Under the supervision of the Board of Directors, I am primarily responsible for planning and organizing the debates the CPD intends to sponsor in 2016, as I have been in each presidential election year since 1988.

2. Prior to serving as Executive Director of the CPD, I served on the staffs of the late Ambassador Elliot Richardson and former U.S. Senator John Danforth. Additionally, I have held appointments at the White House Domestic Council and the Office of Management and Budget. I am a graduate of Williams College and have a master's degree in public administration from Harvard University.

3. The CPD is a private, nonpartisan, not-for-profit corporation dedicated solely to the sponsorship of general election presidential and vice presidential debates and related voter education functions. The CPD was organized in February 1987, under the laws of the District of Columbia, and has its sole office in the District of Columbia. CPD's Articles of Incorporation identify its purpose as "to organize, manage, produce, publicize and support debates for the candidates for President of United States . . ." The CPD has been granted tax-exempt status by the Internal Revenue Service under §501(c)(3) of the Internal

Revenue Code. Consistent with its §501(c)(3) status, the CPD makes no assessment of the merits of any candidate's or party's views, and does not advocate or oppose the election of any candidate or party.

4. The CPD has sponsored presidential and vice presidential debates in every presidential election year since 1988. The CPD's debates each election cycle have been viewed by tens of millions of Americans and have served a valuable voter education function. Prior to CPD's sponsorship in 1988, televised presidential debates were produced in only four general election years: by the networks in 1960, and by the non-profit League of Women Voters in 1976, 1980, and 1984. No televised presidential debates were held in the general elections in 1964, 1968 or 1972.

5. The CPD receives no government funding; nor does it receive funds from any political party. The CPD obtains the funds to produce its debates from the universities and communities that host the debates, and it relies on corporate, foundation and private donations to augment contributions from the debate hosts and to support the CPD's ongoing voter education activities. None of CPD's donors has sought or had any input whatsoever in the promulgation of CPD's candidate selection criteria, in the selection of debate participants, or in any other substantive aspect of the debates.

6. The CPD has a seventeen-member, all volunteer Board of Directors ("CPD Board") made up of distinguished Americans. The Co-Chairmen of the CPD Board, Frank J. Fahrenkopf, Jr. and Michael D. McCurry, each are distinguished civic leaders with extensive records of public service. Among other contributions he has made, Mr. Fahrenkopf has served as Co-Chairman of the Rivlin Commission, which investigated and reported on the government of the District of Columbia, was a founder of the National Endowment for Democracy, was a member of the ABA-sponsored judicial education center for federal and

state judges, and was the Chairman of the American Bar Association's Coalition for Justice, a group coordinating the ABA's initiative to improve the American system of justice. Mr. Fahrenkopf also serves on the Board of Trustees of the E. L. Wiegand Foundation and is a member of the Greater Washington Board of Trade, the Economic Club of Washington and the Federal City Council. Mr. McCurry was a former press secretary to President Clinton from 1995-1998, Senator Harrison A. Williams, Jr., Senator Daniel Patrick Moynihan, the Senate Committee on Labor and Human Resources, and was also the director of communications for the Democratic National Committee. Mr. McCurry is currently a partner at Public Strategies Washington, Inc. and a Professor of Theology at the Wesley Theological Seminary in Washington, DC. He also serves on a number of boards or advisory councils, including Share Our Strength, the Children's Scholarship Fund, the White House Historical Association and the United Methodist Church.

7. The remaining current members of the CPD Board are:

Howard G. Buffett, *Chairman and CEO, The Howard G. Buffett Foundation*

John C. Danforth, *Former Partner, Bryan Cave, L.L.P.*

Mitchell E. Daniels, Jr., *President, Purdue University*

Charles Gibson, *Former Anchor, ABC World News with Charles Gibson*

John Griffen, *Managing Director, Allen & Company LLC*

Jane Harman, *Director, President and CEO, Woodrow Wilson International Center for Scholars*

Antonia Hernandez, *President and CEO, California Community Foundation*

Reverend John I. Jenkins, *President, University of Notre Dame*

Newton N. Minow, *Senior Counsel, Sidley Austin LLP*

Leon E. Panetta, *Chairman, Panetta Institute for Public Policy*

Richard D. Parsons, *Senior Advisor, Providence Equity Partners LLC*

Dorothy S. Ridings, *Former President and CEO, Council on Foundations*

Alan K. Simpson, *Former U.S. Senator*

Olympia Snowe, *Former U.S. Senator*

Shirley M. Tilghman, *Former President, Princeton University*

8. Former Presidents Gerald Ford, Jimmy Carter, Ronald Reagan and Bill Clinton have served as Honorary Co-Chairmen of CPD.

History of the Commission on Presidential Debates

9. CPD was organized in response to the recommendations of two separate studies on presidential elections and debates: (1) the April 1986 Final Report of the Commission on National Elections, entitled Electing the President: A Program for Reform, a nine-month study of presidential elections by a distinguished group of news executives, elected officials, business people, political consultants, and lawyers conducted under the auspices of the Georgetown University Center for Strategic and International Studies, and (2) the Theodore H. White Conference on Presidential Debates held in March 1986 at the Harvard Institute of Politics and chaired by Newton Minow, former chairman of the Federal Communications Commission.

10. Both of those studies underscored the importance presidential debates had assumed in American electoral politics. Rather than permit the existence of debates to turn on the vagaries of each election, the studies recommended that the debates be "institutionalized." More specifically, both studies recommended that the two major political parties create a mechanism designed to ensure, to the greatest extent possible, that debates become a permanent and integral part of the presidential election process.

11. Frank J. Fahrenkopf, Jr. and Paul G. Kirk, Jr., then-chairmen of the Republican National Committee ("RNC") and Democratic National Committee ("DNC") respectively, responded by initiating CPD as a not-for-profit corporation separate and apart from their party organizations. While Messrs. Kirk and Fahrenkopf served as the chairs of

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the major national party committees at the time CPD was formed, they no longer do so. Their terms ended in 1989, some twenty-five years ago. Indeed, since Mr. Fahrenkopf stepped down as RNC chair, in 1989, there have been thirteen subsequent RNC chairpersons; none has held any position with the CPD. Similarly, since Mr. Kirk stepped down as chairman of the DNC, there have been thirteen subsequent chairpersons; none has held any position with the CPD. Mr. Kirk also stepped down as Co-Chair of the CPD in 2009. No current CPD Board member is an officer of the Democratic or Republican National Committee.

12. Although some CPD Board members, like the majority of this country's civic leaders, identify with the Republican or Democratic Party, that certainly is not the case with every Board member. For example, I am not aware of what party, if any, certain Board members would identify with if asked. Further, CPD directors have a longstanding practice of not serving in any official capacity with any political party or campaign while serving on the CPD's Board.

CPD's Adoption of its First Nonpartisan Candidate Selection Criteria

13. On July 7, 1987, over one year prior to the sponsorship of the CPD's first debates, CPD formed an advisory panel of distinguished Americans, including individuals not affiliated with any party, in order to provide guidance to CPD with respect to several areas, including non-major party candidate participation in CPD-sponsored debates. From virtually the beginning of CPD's operations, CPD's Board recognized that, although the leading contenders for the offices of President and Vice President of the United States historically have come from the major parties, CPD's educational mission would be furthered by developing criteria by which to identify any non-major party candidate who, in a particular election year, was a leading candidate for the office of President or Vice

President of the United States, and to whom an invitation should be extended to participate in one or more CPD-sponsored debate.

14. The individuals serving on that advisory panel (and their then-current principal affiliation) included:

Charles Benton, Chairman, Public Media Inc.;

Ambassador Holland Coors, 1987 Year of the Americas;

Marian Wright Edelman, President, Children's Defense Fund;

Mary Hatwood Futrell, President, National Education Association;

Carla A. Hills, Partner, Weil, Gotshall & Manges;

Barbara Jordan, Professor, LBJ School of Public Affairs, University of Texas;

Melvin Laird, Senior Counselor, Readers' Digest;

Ambassador Carol Laise;

William Leonard, former President, CBS News;

Kate Rand Lloyd, Managing Editor, Working Woman Magazine;

Newton Minow, Partner, Sidley & Austin;

Richard Neustadt, Professor, Kennedy School of Government, Harvard University;

Ed Ney, Vice Chairman, Paine-Webber Inc.;

Paul H. O'Neill, Chairman and Chief Executive Officer, Aluminum Company of America;

Nelson W. Polsby, Professor, University of California at Berkeley;

Jody Powell, Chairman and Chief Executive Officer, Ogilvy & Mather Public Affairs;

Murray Rossant, Director, Twentieth Century Fund;

Jill Ruckelshaus, director of various non-profit entities;

Lawrence Spivak, former Producer and Moderator, "Meet the Press";

Robert Strauss, Partner, Akin, Gump, Strauss, Hauer & Feld;

Richard Thornburgh, Director, Institute of Politics, Harvard University;

Marietta Tree, Chairman, Citizen's Committee for New York City;
Anne Wexler, Chairman, Wexler, Reynolds, Harrison & Schule; and
Mrs. Jim Wright.

15. The advisory panel convened in Washington on October 1, 1987 to discuss the issues of its mandate, including the candidate selection criteria, after which the CPD Board appointed a subcommittee of the advisory panel, headed by the late Professor Richard Neustadt of the Kennedy School of Government, Harvard University, to draw on the deliberations and develop nonpartisan criteria for the identification of appropriate third-party candidates to participate in CPD sponsored debates.

16. On November 20, 1987, Professor Neustadt's subcommittee recommended to the CPD Board the adoption of specific nonpartisan candidate selection criteria intended to identify those candidates other than the nominees of the major parties with a realistic chance of becoming President or Vice President of the United States. The Neustadt subcommittee reported that the adoption and application of such criteria would help ensure that the primary educational purpose of the CPD—to ensure that future Presidents and Vice Presidents of the United States are elected after the voters have had an opportunity to hear them debate their principal rivals—would be fulfilled.

17. While the 1987 candidate selection criteria themselves were quite detailed, they included a review of three types of factors: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness, and (3) indicators of national public enthusiasm or concern, to determine whether a candidate had a realistic chance of election.

18. On February 4, 1988, the CPD Board unanimously adopted the selection criteria proposed by Professor Neustadt's subcommittee. The sole objective of the criteria

adopted by the CPD in 1988 was to structure the CPD debates so as to further the nonpartisan educational purpose of those debates, while at the same time complying fully with applicable law. An Advisory Committee to the CPD Board, chaired by Professor Neustadt, was created for the purpose of applying the 1988 candidate selection criteria to the facts and circumstances of the 1988 campaign.

The 1988 Debates

19. Professor Neustadt's Advisory Committee met in advance of the debates and carefully applied the candidate selection criteria to the facts and circumstances of the 1988 campaign. The Advisory Committee unanimously concluded that no non-major party candidate satisfied the criteria and, accordingly, the Advisory Committee recommended to the CPD Board that no non-major party candidate be extended an invitation to participate in the CPD's 1988 debates. The CPD Board of Directors, after carefully considering the Advisory Committee's recommendation, the criteria, and the facts and circumstances of the 1988 campaign, voted unanimously to accept the Advisory Committee's recommendation. Thereafter, the CPD successfully produced three presidential debates between Vice President Bush and Governor Dukakis and one vice presidential debate between Senator Bentsen and Senator Quayle.

The 1992 Debates

20. On or about January 16, 1992, the CPD Board requested that the Advisory Committee, again chaired by Professor Neustadt, assist the CPD in promulgating nonpartisan candidate selection criteria in connection with the 1992 election. Pursuant to the Advisory Committee's recommendation, the CPD Board adopted substantially the same selection criteria used in 1988, with minor technical changes.

21. The 1992 Advisory Committee, consisting of Professor Neustadt; Professor Diana Carlin of the University of Kansas; Dorothy Ridings, Publisher and President of the Bradenton Herald and former President of the League of Women Voters; Kenneth Thompson, Director of the Miller Center, University of Virginia; and Eddie Williams, President, Joint Center for Political and Economic Studies, met on September 9, 1992 to apply the candidate selection criteria to the 100-plus declared presidential candidates seeking election in 1992. At that time, it was the unanimous conclusion of the 1992 Advisory Committee that no non-major party candidate then seeking election had a realistic chance in 1992 of becoming the next President of the United States. Ross Perot, who had withdrawn from the race in July 1992, was not a candidate for President at the time of this determination.

22. On October 5, 1992, the Advisory Committee reconvened at the request of the CPD Board to update its application of the 1992 criteria to include subsequent developments, including Ross Perot's October 1, 1992 reentry into the presidential race. The Advisory Committee concluded that Mr. Perot satisfied the selection criteria, and based on that recommendation, the CPD Board extended invitations to Mr. Perot and his running mate, Admiral James B. Stockdale, to participate in its first two 1992 debates. When it became clear that the debate schedule -- four debates in eight days -- would prevent any meaningful reapplication of the selection criteria, the CPD extended its original recommendation that the Perot/Stockdale campaign participate in two debates to all four debates. Thereafter, the CPD produced three presidential debates involving President Bush, Governor Clinton, and Mr. Perot, and one vice presidential debate between Vice President Quayle, Senator Gore, and Admiral Stockdale.

23. When the Advisory Committee applied the 1992 criteria to Mr. Perot, it faced the unprecedented situation in which a candidate, whose standing in the polls had been approximately 40%, had withdrawn from the race, but then rejoined the race shortly before the debates, with unlimited funds to spend on television campaigning. The Advisory Committee found that it was unable to predict the consequences of that combination, but agreed that Mr. Perot had a chance of election if he did well enough that no candidate received a majority of electoral votes and the election was determined by the United States House of Representatives. Although the Advisory Committee viewed Mr. Perot's prospect of election as unlikely, it concluded that the possibility was not unrealistic, and that Mr. Perot therefore met the CPD's 1992 criteria for debate participation. See September 17, 1996 letter (attached at Tab A).

24. National polls available at the time the CPD made its decision with respect to Ross Perot's participation in 1992 varied significantly, perhaps due to the unprecedented events surrounding Mr. Perot's withdrawal and reentry into the presidential race very shortly before the debates commenced. Polling data made available to the Advisory Committee at the time it made its recommendation to invite Mr. Perot reported national support for Mr. Perot ranging from 9 percent to 20 percent.

The 1996 Debates

25. After evaluation of the prior debates and careful consideration of how best to achieve its educational mission, on September 19, 1995, the CPD Board adopted the same selection criteria, with minor changes, for use in the 1996 debates, and appointed a 1996 Advisory Committee consisting of the same members as the 1992 committee.

26. On September 16, 1996, the Advisory Committee met to apply the candidate selection criteria to the more than 130 declared non-major party presidential candidates

seeking election in 1996. Although the 1996 candidate selection criteria did not expressly require it to do so, the 1996 Advisory Committee independently applied the criteria to the Democratic and Republican party nominees. In light of its findings, the Advisory Committee recommended to the CPD's Board that only President Clinton and Senator Dole be invited to participate in the CPD's 1996 presidential debate, and that only Vice President Gore and Congressman Kemp be invited to participate in the CPD's 1996 vice presidential debate. The CPD Board unanimously accepted the 1996 Advisory Committee's recommendation.

27. The Advisory Committee explained that after careful consideration of the circumstances in the 1996 campaign, it found that neither Mr. Perot nor any other non-major party candidate had a realistic chance of being elected president that year. With respect to Mr. Perot, the Advisory Committee emphasized that the circumstances of the 1996 campaign differed from the unprecedented circumstances of 1992—which included the fact that at a point before his withdrawal from the race in 1992, Mr. Perot had registered support at a level of 40% in the polls, and that in 1996, unlike 1992, Mr. Perot's funding was limited by his acceptance of a federal subsidy.

28. In October 1996, the CPD sponsored two presidential debates between President Clinton and Senator Dole and one vice-presidential debate between their running mates.

2000 through 2012: The CPD Adopts and Relies upon More Streamlined Criteria

29. After each election cycle, the CPD has examined a wide range of issues relating to the debates. These reviews have considered format, timing and other issues, including the candidate selection process. The review the CPD conducts after each election is part of the CPD's ongoing effort to enhance the contribution the debates make to the

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process by which Americans select their next President. After very careful study and deliberation, the CPD adopted more streamlined criteria in January 2000 for use in the 2000 presidential election debates. In summary, the CPD Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation (the "2000 Criteria") were as follows: (1) constitutional eligibility; (2) appearance on a sufficient number of state ballots to achieve an Electoral College majority; and (3) a level of support of at least fifteen percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination. See 2000 Criteria (attached at Tab B). These same Criteria, without material change, have been adopted and relied upon by CPD in each election cycle since 2000. See 2004, 2008 and 2012 Criteria (attached at Tabs C, D and E respectively). I refer to these collectively as the 2000 Criteria.

30. The CPD adopted the 2000 Criteria in the belief that the streamlined criteria would enhance the debates and the process by which Americans select the President. The 2000 Criteria are faithful to the long-stated goal of the CPD's debates—to bring before the American people, in a debate, the leading candidates for the Presidency and Vice-Presidency. This allows the electorate to cast their ballots after having had an opportunity to sharpen their views of the leading candidates. The approach also has the virtue of clarity and predictability, which the CPD believed would further enhance the public's confidence in the debate process.

31. The CPD's 2000 Criteria were not adopted with any partisan (or bipartisan) purpose. They were not adopted with the intent to keep any party or candidate from participating in the CPD's debates or to bring about a preordained result. Rather, the 2000

Criteria were adopted to further the legitimate voter education purposes for which the CPD sponsors debates.

32. The CPD's selection of fifteen percent as the requisite level of support was preceded by careful study and reflects a number of considerations. It was the CPD's considered judgment that the fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of public support, thereby creating an unacceptable risk that leading candidates with the highest levels of public support would refuse to participate.

33. Prior to adopting the 2000 Criteria, the CPD conducted its own analysis of the results of presidential elections over the modern era and concluded that a level of fifteen percent support of the national electorate is achievable by a significant third party or independent candidate. Furthermore, fifteen percent was the figure used in the League of Women Voters' 1980 selection criteria, which resulted in the inclusion of independent candidate John Anderson in one of the League's debates. In making this determination, the CPD considered, in particular, the popular support achieved by George Wallace in 1968 (Mr. Wallace had achieved a level of support as high as 20% in pre-election polls from September 1968); by John Anderson in 1980 (Mr. Anderson's support in various polls reached fifteen percent when the League of Women Voters invited him to participate in one of its debates); and by Ross Perot in 1992 (Mr. Perot's standing in 1992 polls at one time was close to 40% and exceeded that of the major party candidates, and he ultimately received 18.7% of the popular vote).

34. The CPD considered, but rejected, alternate standards, including the possibility of using eligibility for public funding of general election campaigns, rather than

polling data, as a criterion for debate participation. That criterion is itself both potentially overinclusive and underinclusive. Eligibility for general election funding is determined based on performance in the prior presidential general election. The CPD realized that such an approach would be underinclusive to the extent that it would automatically preclude participation by a prominent newcomer (such as Ross Perot in 1992), but also would be overinclusive to the extent it would mandate an invitation to the nominee of a party that performed well in a prior election, but who did not enjoy significant national public support in the current election. In addition, while the United States Congress determined that five percent was a sufficient level of support for purposes of determining eligibility for federal funding as a "minor" party (at a level that is substantially lower than that received by the "major" parties), as noted, a debate host hoping to present the public with a debate among the leading candidates (none of whom are required to debate) must necessarily take into account a different set of considerations.

35. In order to ensure a careful and thoughtful application of the polling data aspect of the 2000 Criteria, in each election cycle beginning in 2000, the CPD has retained Dr. Frank Newport, the Editor-in-Chief of Gallup, as a consultant. In that role, Dr. Newport has advised the CPD both on the selection of the five national public opinion polls on which to rely and then in connection with the collection of the data from those polls. In each election cycle, CPD has accepted and relied upon Dr. Newport's recommendation on poll selection.

2016: The CPD Plans for General Election Debates

36. The CPD has not yet announced the sites, dates, formats, or the candidate selection criteria for the 2016 presidential debates. As it has done in connection with previous election cycles, the CPD's Board of Directors will convene to examine its

approach to candidate selection and will announce its 2016 Nonpartisan Candidate Selection Criteria well in advance of the 2016 general election debates. Those Criteria, as in the past, will be adopted solely to advance the educational purposes of the debates and not for the purpose of advancing or opposing any candidate or political party.

Additional Points

37. In each presidential election debate since 1988, the CPD's candidate selection decisions have been made based on a good faith application of the CPD's published candidate selection criteria, as described earlier in this Declaration. In 1988, 1992 and 1996, the CPD's decisions regarding which candidates to invite to its debates were made by the CPD Board. In each instance, the Board unanimously adopted the recommendations of the independent Advisory Committees charged with the task of applying the CPD's pre-established, objective criteria. At no time did any campaign or the representative of any campaign have a role in the Advisory Committee's or the CPD Board's decision-making process. In 2000, 2004, 2008, and 2012, the decisions were made by the CPD Board based on a straightforward application of the wholly-transparent criteria first adopted for 2000.

38. I am aware that the complainants have made certain allegations based on the fact that the major party nominees have negotiated memoranda of understanding or agreement in connection with the debates sponsored by the CPD. Complainant errs in stating or suggesting that this is a practice that began in 1988 with the CPD's sponsorship. Based on my study of previous presidential debates, such agreements are the norm. In any event, neither CPD nor the debate moderators are parties to any such agreements. The agreements cited by the complainants have largely adopted the CPD's previously-stated plans with respect to the

number, place, dates, format, and, most importantly for present purposes, have expressly deferred to the CPD's application of its previously announced candidate selection criteria for the debates. The candidate agreements address a variety of production details that have no bearing on the educational value or mission of the debates. Even as to those details, the CPD's production team has exercised its independent judgment when actually producing the debates to ensure a high quality broadcast. Any understandings or agreements between the major party nominees have not been the basis for decisions by the CPD concerning candidate eligibility to participate in the CPD's debates; those decisions, as stated previously, have been based on a good faith application of the CPD's published nonpartisan candidate selection criteria.

39. Attached hereto at Tabs F-I are what I understand to be true and complete copy of the executed Memorandum of Understanding between the major party nominees in 2000, 2004, 2008 and 2012. Each of these documents expressly states that the question of candidate participation was to be determined on the basis of the CPD's earlier published Nonpartisan Candidate Selection Criteria.

40. In addition to sponsorship of the presidential debates, the CPD has engaged in a number of other related voter education activities, each intended in a nonpartisan manner to enhance the educational value of the debates themselves. In 1988, the CPD, in conjunction with the Library of Congress and the Smithsonian Institution, prepared and distributed illustrated brochures on the history and role of political debates. In 1990, the CPD sponsored a symposium on debate format attended by academic experts, journalists, political scientists and public policy observers. Also in 1990, the CPD in partnership with the National Association of Broadcasters produced a videotape and brochure giving guidance to schools, media organizations and civic groups on how to sponsor debates. In

1992, the CPD produced a viewers' guide to debates in cooperation with the Speech Communication Association. In connection with the 1996 Debates, the CPD sponsored DebateWatch '96, in which over 130 organizations (including numerous cities and town, high schools, presidential libraries, civic associations, universities and chambers of commerce) participated by hosting forums in which citizens viewed the debates together and had the opportunity to discuss the debates afterwards with other viewers and listeners. In 2000, the CPD's voter education projects reached millions of Americans, primarily through an aggressive Internet effort. More than 6 million people visited the CPD's website, www.debates.org for: online surveys (completed by 44,500 citizens); issue forums on election topics; an online debate history; educational resources for teachers and civic leaders; and services for non-English speakers including education materials in Spanish and debate transcripts in six foreign languages. In addition to online outreach, the CPD also conducted the DebateWatch program, through which citizens gathered in communities nationwide to watch the debates, discuss them, and share feedback with the CPD. The CPD partnered with over 200 organizations, schools, and technology companies in order to complete these tasks. In 2000, the CPD also produced a two-hour PBS special, "Debating our Destiny," in conjunction with McNeil/Lehrer Productions. By partnering with voter education organizations including the Smithsonian Institution, AARP, Congressional Black Caucus Institute, Lifetime Television, and KidsVoting USA, the CPD has reached out to citizens both here and those posted overseas to maximize the educational value of the debates.

41. For 25 years, the CPD has shared its experiences with groups in other countries that seek to make candidate debates part of their electoral process. CPD has now played a part in exchanges with more than 35 countries. In most instances, these are fragile democracies,

sometimes emerging from civil strife. The CPD offers assistance in matters ranging from production and broadcast of the debates to candidate negotiation and voter education. CPD has worked with others to create an informal network of approximately 19 countries who work together to help each other start or improve debates. The network has recently launched website that can be found at www.debatesinternational.org.

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 12th day of December, 2014.


JANET H. BROWN

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September 17, 1996

Mr. Paul G. Kirk, Jr.
Mr. Frank J. Fahrenkopf, Jr.
Commission on Presidential Debates
601 13th Street, N.W.
Washington, D.C. 20005

Dear Chairman Kirk and Chairman Fahrenkopf:

The Advisory Committee has been asked to review the electoral prospects of minor party candidates in light of the latest available data on the Commission's criteria, and then to judge, by the Commission's standard for admission to its debates, whether each candidate does or does not have a realistic chance of becoming President of the United States next January 20. The chance need not be overwhelming but must be more than theoretical. An affirmative answer to that question is the only basis, under long-established policy, for the Commission to invite him or her to the debates it sponsors. That single standard ("realistic chance") is for the Commission to apply. This Committee merely offers its advisory judgment.

The electoral principle behind the Commission's single standard is, as we understand it, that this Fall's debates, coming at the end of a year-long nomination and election process, should help the voters face the actual choice before them, and therefore ought to be as realistic as possible. Since 1987, you, the Commissioners, have stressed, rightly in our view, that your debates should be confined to the presidential and vice presidential candidates who will be sworn in next January, along with their principal rivals.

"Realistic chance" is meant to focus attention on that real choice.

We began with Mr. Ross Perot, now of the Reform Party. We have reviewed the data your staff has assembled for us, supplemented by telephonic inquiries of our own to political scientists and political journalists across the country. We have concluded that, at this stage of the campaign, Mr. Perot has no realistic chance either of popular election in November or of subsequent election by the House of Representatives, in the event no candidate obtains an Electoral College majority. None of the expert

Chairman Kirk and Chairman Fahrenkopf
September 17, 1996
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observers we have consulted thinks otherwise. Some point to possibilities of extraordinary events later in the campaign, but grant that those possibilities do not change the likelihoods as of today.

Four years ago, we confronted an unprecedented condition when Mr. Perot rejoined the campaign in October. We were mindful that the preceding Spring, before his withdrawal, he had registered approximately 40 percent in the polls, and that upon rejoining the campaign, he could spend unlimited funds on television campaigning. Unable to predict the consequences of this combination, we agreed that he must be presumed to have a remote chance of election, should he do well enough so that no one else won a majority of electoral votes. His chances in the House of Representatives we found incalculable. So, we concluded that his prospect of election was unlikely but not unrealistic.

With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a federal subsidy, we see no similar circumstances at the present time. Nor do any of the academic or journalistic individuals we have consulted.

Moving on to the other minor party candidates, we find no one with a realistic chance of being elected President this year. Applying the same standard and criteria to them individually as to Mr. Perot, our response is again "no" in each case. The observers we have consulted take the same view. Three of the minor party candidates, in addition to Mr. Perot, do have a theoretical chance of election in November, by virtue of placement on the ballots of enough states to produce an Electoral College majority. We do not, however, see their election as a realistic possibility.

Therefore, the Advisory Committee unanimously concludes at this time that only President Clinton and Senator Dole qualify for admission to CPD's debates. We stand ready to reconvene should present circumstances change.

Sincerely yours,



Richard E. Neustadt
For the Advisory Committee on Candidate Selection

Richard E. Neustadt, Chairman
Diann Prentice Carlin
Dorothy S. Ridings
Kenneth W. Thompson
Eddie N. Williams

TAB B

**COMMISSION ON PRESIDENTIAL
DEBATES' NONPARTISAN CANDIDATE SELECTION CRITERIA
FOR 2000 GENERAL ELECTION DEBATE PARTICIPATION**

A. INTRODUCTION

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past three general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2000 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In the last two elections, there were over one hundred declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2000 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

In connection with the 2000 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

B. 2000 NONPARTISAN SELECTION CRITERIA

The CPD's nonpartisan criteria for selecting candidates to participate in its 2000 general election presidential debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

2. **EVIDENCE OF BALLOT ACCESS**

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2000 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College (at least 270 votes), regardless of the popular vote, is elected President.

3. **INDICATORS OF ELECTORAL SUPPORT**

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

C. **APPLICATION OF CRITERIA**

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2000, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: January 5, 2000.

TAB C

THEODORE LOWE

**COMMISSION ON PRESIDENTIAL
DEBATES' NONPARTISAN CANDIDATE SELECTION CRITERIA
FOR 2004 GENERAL ELECTION DEBATE PARTICIPATION**

A. INTRODUCTION

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past four general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2004 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In each of the last four elections, there were scores of declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2004 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

In connection with the 2004 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

B. 2004 NONPARTISAN SELECTION CRITERIA

The CPD's nonpartisan criteria for selecting candidates to participate in its 2004 general election presidential debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

2. EVIDENCE OF BALLOT ACCESS

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2004 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College, at least 270 votes, is elected President regardless of the popular vote.

3. INDICATORS OF ELECTORAL SUPPORT

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

C. APPLICATION OF CRITERIA

CPD's determination with respect to participation in CPD's first-scheduled debate will be made after Labor Day 2004, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in CPD's first presidential debate. Invitations to participate in the second and third of CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: September 2003

TAB D

**COMMISSION ON PRESIDENTIAL
DEBATES' NONPARTISAN CANDIDATE SELECTION CRITERIA
FOR 2008 GENERAL ELECTION DEBATE PARTICIPATION**

A. INTRODUCTION

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past five general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2008 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In each of the last five elections, there were scores of declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2008 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

In connection with the 2008 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of the CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria must be satisfied before a candidate will be invited to debate.

B. 2008 NONPARTISAN SELECTION CRITERIA

The CPD's nonpartisan criteria for selecting candidates to participate in the 2008 general election presidential debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and

- c. is otherwise eligible under the Constitution.

2. EVIDENCE OF BALLOT ACCESS

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2008 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College, at least 270 votes, is elected President regardless of the popular vote.

3. INDICATORS OF ELECTORAL SUPPORT

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

C. APPLICATION OF CRITERIA

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2008, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: October 2007

TAB E

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**COMMISSION ON PRESIDENTIAL DEBATES'
NONPARTISAN CANDIDATE SELECTION CRITERIA
FOR 2012 GENERAL ELECTION DEBATE PARTICIPATION**

A. INTRODUCTION

The mission of the nonpartisan Commission on Presidential Debates (the "CPD") is to ensure, for the benefit of the American electorate, that general election debates are held every four years between the leading candidates for the offices of President and Vice President of the United States. The CPD sponsored a series of such debates in each of the past six general elections, and has begun the planning, preparation, and organization of a series of nonpartisan debates among leading candidates for the Presidency and Vice Presidency in the 2012 general election. As in prior years, the CPD's voter educational activities will be conducted in accordance with all applicable legal requirements, including regulations of the Federal Election Commission that require that debate sponsors extend invitations to debate based on the application of "pre-established, objective" criteria.

The goal of the CPD's debates is to afford the members of the public an opportunity to sharpen their views, in a focused debate format, of those candidates from among whom the next President and Vice President will be selected. In each of the last six elections, there were scores of declared candidates for the Presidency, excluding those seeking the nomination of one of the major parties. During the course of the campaign, the candidates are afforded many opportunities in a great variety of forums to advance their candidacies. In order most fully and fairly to achieve the educational purposes of its debates, the CPD has developed nonpartisan, objective criteria upon which it will base its decisions regarding selection of the candidates to participate in its 2012 debates. The purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency.

In connection with the 2012 general election, the CPD will apply three criteria to each declared candidate to determine whether that candidate qualifies for inclusion in one or more of the CPD's debates. The criteria are (1) constitutional eligibility, (2) ballot access, and (3) electoral support. All three criteria shall be satisfied before a candidate will be invited to debate.

B. 2012 NONPARTISAN SELECTION CRITERIA

The CPD's nonpartisan criteria for selecting candidates to participate in the 2012 general election presidential debates are:

1. EVIDENCE OF CONSTITUTIONAL ELIGIBILITY

The CPD's first criterion requires satisfaction of the eligibility requirements of Article II, Section 1 of the Constitution. The requirements are satisfied if the candidate:

- a. is at least 35 years of age;
- b. is a Natural Born Citizen of the United States and a resident of the United States for fourteen years; and
- c. is otherwise eligible under the Constitution.

2. EVIDENCE OF BALLOT ACCESS

The CPD's second criterion requires that the candidate qualify to have his/her name appear on enough state ballots to have at least a mathematical chance of securing an Electoral College majority in the 2012 general election. Under the Constitution, the candidate who receives a majority of votes in the Electoral College, at least 270 votes, is elected President regardless of the popular vote.

3. INDICATORS OF ELECTORAL SUPPORT

The CPD's third criterion requires that the candidate have a level of support of at least 15% (fifteen percent) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

C. APPLICATION OF CRITERIA

The CPD's determination with respect to participation in the CPD's first-scheduled debate will be made after Labor Day 2012, but sufficiently in advance of the first-scheduled debate to allow for orderly planning. Invitations to participate in the vice-presidential debate will be extended to the running mates of each of the presidential candidates qualifying for participation in the CPD's first presidential debate. Invitations to participate in the second and third of the CPD's scheduled presidential debates will be based upon satisfaction of the same multiple criteria prior to each debate.

Adopted: October 20, 2011

TAB F

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding constitutes an agreement between Gore/Lieberman Inc. and Bush/Cheney 2000, Inc. (the "campaigns") regarding the rules that will govern debates in which the campaigns participate in 2000. This agreement shall be binding upon the Bush/Cheney and Gore/Lieberman campaigns and, if it agrees to sponsor the debates, upon the Commission on Presidential Debates (the "Commission").

1. Number, Dates, Time, Locations

(a) Presidential Debates

<u>Date</u>	<u>Location</u>
October 3	University of Massachusetts, Boston, Massachusetts
October 11	Wake Forest University, Winston-Salem, North Carolina
October 17	Washington University, St. Louis, Missouri

(b) Vice Presidential Debate

<u>Date</u>	<u>Location</u>
October 5	Centre College, Danville, Kentucky

(c) Each debate shall begin at 9 p.m., EDT.

(d) The parties agree that they will not (1) issue any challenges for additional debates, (2) appear at any other debate or adversarial forum with any other presidential or vice presidential

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candidate, or (3) accept any network air time offers that involve a debate format or otherwise involve the simultaneous appearance of more than one candidate.

2. Sponsorship

The two campaigns will participate in four debates sponsored by the Commission on Presidential Debates ("Commission") or if the Commission declines, another entity. The parties agree that the Commission's Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation shall apply to determining the candidates to be invited to participate in these debates.

3. Participants

If one or more candidates from campaigns other than the two (2) signatories is invited to participate pursuant to those Selection Criteria, those candidates shall be included in the debates, if those candidates accept the terms of this agreement. Any modifications to this agreement must be agreed upon by each of the signatories to this agreement as well as all other candidates selected to join the debate.

4. Moderator

(a) Each debate will have a single moderator.

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- (b) The parties have accepted the Commission's recommendation of Jim Lehrer as moderator for the three Presidential debates, and of Bernard Shaw for the Vice Presidential debate.

2. Rules Applicable to All Debates

The following rules shall apply to each of the four debates:

- (a) Each debate shall last for ninety (90) minutes.
- (b) For each debate there shall be no opening statements, but each candidate may make a two (2) minute closing statement.
- (c) No props, notes, charts, diagrams, or other writings or other tangible things may be brought into the debate by any candidate. If a candidate uses a prop, note, or other writing or other tangible thing during a debate, the moderator must interrupt and explain that the use of the prop, note, or other writing or thing violates the debate rules agreed to by that candidate.
- (d) Notwithstanding subparagraph 5(c), the candidates may take notes during the debate on the size, color, and type of paper each prefers and using the type of pen

or pencil that each prefers. Each candidate must submit to the staff of the Commission prior to the debate all such paper and any pens or pencils with which a candidate may wish to take notes during the debate, and the staff of the Commission will place such paper, pens, and pencils on the podium, table, or other structure to be used by the candidate in that debate.

- (c) Neither film footage nor video footage nor any audio excerpts from the debates may be used publicly by either candidate's campaign through any means, including but not limited to, radio, television, Internet or videorapes, whether broadcast or distributed in any other manner.
- (f) The candidates may not ask each other direct questions, but may ask rhetorical questions.
- (g) The order of questioning and closing statements shall be determined as follows:
 - (1) The Commission will conduct a coin toss at least 72 hours before the first Presidential debate. At that time, the winner of the coin toss shall have the option of choosing, for

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the October 3 debate, either (a) whether to take the first or second question, or (b) whether to give the first or second closing statement. At that time, the loser of the coin toss will have the choice of question order or closing statement order not exercised by the winner of the coin toss. For the October 11 debate, the loser of the coin toss shall have the option of choosing either (a) whether to take the first or second question, or (b) whether to give the first or second closing statement, with the winner of the coin toss having the choice of question order or closing statement not exercised by the loser of the coin toss. The Commission shall set a time at least 72 hours before the October 11 debate at which the candidates shall make their choices for that debate.

- (11) For the October 17 debate, the order of questioning and closing statements shall be determined by a separate coin toss in the same

manner as for the October 3 debate, to take place at least 72 hours before the debate.

- (iii) The order of questioning and closing statements for the October 5 Vice Presidential debate shall be determined by a separate coin toss in the same manner as for the October 3 debate, to take place at least 72 hours before the debate.

- (h) Each candidate shall determine the manner by which he prefers to be addressed by the moderator and shall communicate this to the Commission, at least forty-eight (48) hours before the October 3 debate.

- (i) Whether or not a debate runs beyond the planned ending time, each candidate shall be entitled to make a closing statement in accordance with subparagraph (b). The Commission shall use its best efforts to ensure that the TV networks carry the entire debate even if it runs past the specified ending time.

- (j) No question shall be asked of a candidate by the moderator if less than six minutes remain in the scheduled time of the debate.

(k) The candidates shall not address each other with proposed pledges.

(l) In each debate, the moderator shall:

- (i) Open and close the debate and use his or her best efforts to enforce all time limits;
- (ii) use his or her best efforts to ensure that the questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world;
- (iii) vary the topics on which he or she questions the candidates and ensure that the topics of the questions are fairly apportioned between the candidates;
- (iv) use best efforts to ensure that the two candidates speak for approximately equal amounts of time during the course of each debate; and
- (v) use any reasonable method to ensure that the agreed-upon format is followed by the candidates and the audience.

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6. Additional Rules Applicable to October 3 Debate

For the October 3 debate, the candidates will appear at podiums. This debate shall be governed by the rules set forth in section 5 and the following additional rules:

- (a) The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(g). The candidate receiving the question shall be entitled to give an opening response not to exceed two (2) minutes, and thereafter the other candidate shall be permitted to comment on the question and/or the first candidate's answer for up to one (1) minute. Thereafter the moderator may extend the discussion for a period of time not to exceed three and one-half (3½) minutes, but the moderator shall begin each such discussion by calling upon the candidate who first received the question.
- (b) The moderator shall then ask a question of the other candidate, and the answer, comments by the other candidate, and extension of discussion by the moderator shall be conducted as set out in paragraph 6(a) above for the first question.
- Thereafter the moderator shall follow the procedure in

paragraph 6(a) above by asking a question of the first candidate and shall continue with questions of the candidates in rotation until the time for closing statements occurs.

- (c) During the extended discussion of a question, no candidate may speak for more than 2 minutes at one time.
- (d) The moderator shall manage the debate so that the candidates address at least fourteen (14) questions.

7. Additional Rules Applicable to October 11 Debate

For the October 11 debate, the candidates will be seated at a table. This debate shall be governed by the rules set forth in section 5 and the following additional rules:

- (a) The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(g). That candidate shall have up to two (2) minutes to respond to the question, and the other candidate then shall have up to two (2) minutes to comment on the question or on the first candidate's answer. Thereafter, the moderator shall have discretion to extend the discussion of that question, but shall balance additional discussion of that

forth in subparagraph 5(g). The candidate to whom the question is initially directed shall have up to two (2) minutes to respond, after which the other candidate shall have up to two (2) minutes to respond to the question and/or to comment on the first candidate's answer. Thereafter, the moderator shall have discretion to extend the discussion of the question, but shall balance additional discussion of the question with the interest in addressing a wide range of topics during the debate.

- (b) After completion of the discussion of the first question, the moderator shall call upon an audience member to direct a question to the candidate to whom the first question was not directed, and follow the procedure outlined in paragraph 8(a) above. Thereafter, the moderator shall follow the procedures in paragraph 8(a) by calling upon another audience member to ask a question of the first candidate and shall continue facilitating questions of the candidates in rotation until the time for closing statements occurs.

- (c) During the extended discussion of a question, no candidate may speak for more than two (2) minutes at one time.
- (d) The audience members shall not ask follow-up questions or otherwise participate in the extended discussion, and the audience member's microphone shall be turned off after he or she completes asking the question.
- (e) Prior to the start of the debate, audience members will be asked to submit their questions in writing to the moderator. No third party, including both the Commission and the campaigns, shall be permitted to see the questions. The moderator will review the questions and eliminate any questions that the moderator deems inappropriate. The moderator shall develop, and describe to the campaigns, a method for selecting questions at random while assuring that questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world. Each question selected will be asked by the audience member submitting that question.

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(f) The debate will take place before a live audience of between 100 and 150 persons who shall be seated and who describe themselves as likely voters who are "uncommitted" as to their 2000 Presidential vote. These participants will be selected by an independent research firm agreed upon by the two campaigns. The research firm shall have sole responsibility for selecting the nationally demographically representative group of voters, after providing a comprehensive briefing to the campaigns, either of which may raise objections to the Commission within 24 hours of the briefing.

(g) Participants selected shall not be contacted directly or indirectly by the campaigns before the debate. The Commission shall not contact the participants before the debate other than for logistical purposes.

9. Additional Rules Applicable to October 5 Debate

For the October 5 Vice Presidential debate, the candidates will be seated at a table. This debate shall be governed by the rules set forth in sections 5 and 7.

10. Staging

(a) The following rules apply to each of the four debates:

- (i) All staging arrangements for the debates not specifically addressed in this agreement shall be jointly addressed by representatives of the two campaigns.
- (ii) Governor Bush shall occupy the stage-left position for the October 3 debate; Vice President Gore will have first choice of stage position for the October 11 debate. Vice President Gore or his representative shall communicate his choice by written facsimile to the Commission and to Bush/Cheney 2000 at least seventy-two (72) hours before the debate. The stage position for the October 17 debate will be determined by a coin toss to take place at least seventy-two (72) hours before the debate. The stage position for the October 5 Vice Presidential debate will be determined by a separate coin toss to take place at least seventy-two (72) hours before the debate.
- (iii) For the October 3 and October 17 debates, the candidates shall enter the stage upon a verbal

cue by the moderator after the program goes on the air, proceed to center stage, shake hands, and proceed directly to their positions behind their podiums (for the October 3 debate) or to their stools (for the October 17 debate). For the October 3 and October 11 debates, the candidates shall be pre-positioned before the program goes on the air.

- (iv) Except as provided in subparagraph (d) (viii), TV cameras will be locked into place during all debates. They may, however, tilt or rotate as needed.
- (v) Except as provided in subparagraph (d) (viii), TV coverage during the question and answer period shall be limited to shots of the candidates or moderator and in no case shall any television shots be taken of any member of the audience (including candidates' family members) from the time the first question is asked until the conclusion of the closing statements. When a candidate is speaking, either in answering a question or making his

closing statement. TV coverage will be limited to the candidate speaking. There will be no TV out-aways to any candidate who is not responding to a question while another candidate is answering a question or to a candidate who is not giving a closing statement while another candidate is doing so.

- (vi) The camera located at the rear of the stage shall be used only to take shots of the moderator.
- (vii) For each debate each candidate may choose to have either (a) a monitor with live feed from the debate positioned in his line of sight but not visible to the other candidate; or (b) tally lights in his line of sight but not visible to the other candidate. In either case, the candidate other than the candidate choosing a monitor or tally lights shall have for each debate a right of disapproval, in his sole discretion, over the use of such monitor or tally lights.

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(viii) All members of the audience will be instructed by the moderator before the debate goes on the air and by the moderator after the debate goes on the air not to applaud, or otherwise participate in the debate by any means other than by silent observation. The moderator shall use his or her best efforts to enforce this provision.

(ix) The Commission shall use best efforts to maintain an appropriate temperature according to industry standards for the entire debate.

(x) Each candidate shall be permitted to have a complete, private production and technical briefing and walk-through ("Briefing") at the location of the debate on the day of the debate. The order of the Briefing shall be determined by agreement or, failing candidate agreement, a coin flip. Each candidate will have a maximum of one (1) hour for this Briefing. Production lock-down will not occur for any candidate unless that candidate has had his Briefing. There will be no filming,

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taping, photography or recording of any kind (except by that candidate's personal photographer) allowed during the candidates' Briefing. No media will be allowed into the auditorium where the debate will take place during a candidate's Briefing. All persons, including but not limited to the media, other candidates and their representatives, and the employees or other agents of the Commission other than those necessary to conduct the Briefing, shall vacate the debate site while a candidate has his Briefing. The Commission will provide to each candidate's representatives a written statement and plan which describes the measures to be taken by the Commission to ensure the complete privacy of all Briefings.

- (xi) The color and style of the backdrop will be recommended by the Commission and mutually determined by representatives of the campaigns. The Commission shall make its recommendation known to the campaigns at least

(xiv) In addition to Secret Service personnel, the Vice President's military aide, and the Vice President's physician, each candidate will be permitted to have one (1) pre-designated staff member in the wings or in the immediate backstage area during the debate at a location to be mutually agreed upon by representatives of the campaigns at each site. All other staff must vacate the wings or immediate backstage areas no later than (5) minutes before the debate commences. A PL phone line will be provided between each candidate's staff work area and the producer.

(xv) Other than security personnel, not more than two (2) aides will accompany each candidate on the stage before the program begins.

(xvi) Each candidate shall be allowed to have one (1) professional still photographer present on the stage before the debate begins and in the wings during the debate, as desired, and on the stage immediately upon the conclusion of the debate. No photos shall be taken from the wings by these photographers during the debate. Photos taken by these photographers may be distributed to the press as determined by each candidate.

(b) In addition to the rules in subparagraph (a), the following rules apply to the October 3 debate:

(1) The Commission shall construct the podiums, and each shall be identical to view from the audience side. The podiums shall measure forty-eight (48) inches from the stage floor to the outside top of the podium facing the audience and otherwise shall be constructed in the style and specifications recommended by

the Commission, shown in Attachment A. There shall be no writings or markings of any kind on the fronts of the podiums. No candidate shall be permitted to use risers or any other device to create an impression of elevated height, and no candidate shall be permitted to use chairs, stools or other seating devices during the debate.

- (ii) Each podium shall have installed a fixed hard-wired microphone, and an identical microphone to be used as backup per industry standards.
- (iii) The podiums will be equally angled toward the center of the stage at a degree to be determined by the Commission's producer. The podiums shall be ten (10) feet apart; such distance shall be measured from the left-right center of a podium to the left-right center of the other podium.
- (iv) The moderator will be seated at a table so as to be positioned in front, between, and equidistant from the candidates, and between

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the cameras to which the candidates direct their answers.

- (v) As soon as possible, the Commission shall submit for joint consultation with the campaigns a diagram for camera placement.

- (vi) The Commission shall recommend a single system of time cues and placement subject to approval by both campaigns. Time cues in the form of yellow and red lights will be given to the candidates and the moderator when there are thirty (30) seconds remaining and fifteen (15) seconds remaining respectively for the two (2) minute and one (1) minute responses permitted under section 6(a).

- (c) In addition to the rules in subparagraph (a), the following rules apply to the October 11 debate and the October 5 Vice Presidential debate:

- (1) The Commission shall construct the table according to the style and specifications proposed by the Commission in consultation with each campaign. The moderator shall be

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candidates. The precise staging arrangement will be determined by the Commission's producer subject to the approval of representatives of both campaigns.

- (ii) The stools shall be identical and have backs and a footrest and shall be approved by the candidates' representatives.
- (iii) Each candidate shall have a place to put a glass of water and paper and pens or pencils for taking notes (in accordance with subparagraph 5(d)) of sufficient height to allow note taking while sitting on the stool, and which shall be designed by the Commission, subject to the approval of representatives of both campaigns.
- (iv) Each candidate may move about in a pre-designated area, as proposed by the Commission in consultation with each campaign, and may not leave that area while the debate is underway. The pre-designated areas of the candidates may not overlap.

- (v) Each candidate shall have a choice of either wireless hand held microphone or wireless lapel microphone to allow him to move about as provided for in subparagraph (iv) and to face different directions while responding to questions from the audience.
- (vi) As soon as possible, the Commission shall submit for joint consultation by the campaigns a diagram for camera placement.
- (vii) The Commission shall recommend a single system of time cues subject to approval by both campaigns.
- (viii) Notwithstanding subparagraphs (a) (iv) and (a) (v) a roving camera may be used for shots of an audience member only during the time that audience member is asking a question.

11. Ticket Distribution and Seating Arrangements

- (a) The Commission shall be responsible for printing and ensuring security of all tickets to all debates. Each campaign shall be entitled to receive directly from the Commission one-third of the available tickets (excluding those allocated to the participating

audience in the October 17 debate), with the remaining one-third going to the Commission.

- (b) In the audience participation debate, the participating audience shall be separated from any nonparticipating audience, and steps shall be taken to ensure that the participating audience is admitted to the debate site without contact with the campaigns, the media, and the nonparticipating audience.
- (c) The Commission shall allocate tickets to the two campaigns in such a manner to ensure that supporters of each candidate are interspersed with supporters of the other candidate. For the October 3, October 5, and October 11 debates, the family members of each candidate shall be seated in the front row, diagonally across from the candidate directly in his line of site while seated or standing at the podium. For the October 17 debate, the family members of each candidate shall be seated as mutually agreed by representatives of the campaigns.
- (d) Any media seated in the auditorium shall be accommodated only in the last two (2) rows of the auditorium farthest from the stage. Two (2) still

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photo stands may be positioned near either side of the television camera stands located in the audience. (A media center with all necessary feeds will be otherwise available.)

- (e) Tickets will be delivered by the Commission to the chairman of each candidate's campaign or his designated representative by 12:00 noon on the day preceding each debate.

The Commission will invite from its allotment (two (2) tickets each) an agreed upon list of officeholders such as the U.S. Senate and House Majority and Minority Leaders, the Governor and Lieutenant Governor of the State holding the debate, an appropriate list of other public officials and the President of the University sponsoring the debate. The Commission shall use its best efforts not to favor one candidate in the distribution of its allotment of tickets.

12. Dressing Rooms/Holding Rooms

- (a) Each candidate shall have a dressing room available of adequate size so as to provide private seclusion for that candidate and adequate space for the staff the candidate desires to have in this area. The two dressing rooms shall be comparable in size and in

quality and in proximity and access to the debate stage.

- (b) An equal number of other backstage rooms will be available for other staff members of each candidate. Each candidate shall have a minimum of eight such rooms, five of which shall be in the debate facility itself, and three of which shall be located next to the press center. The rooms located next to the media center shall be located so that each campaign has equal proximity and ease of access to the media center. Each of the eight rooms shall be a minimum of 10 feet by 10 feet. All of these rooms shall be furnished as deemed necessary by the candidates' representatives. Each candidate's rooms shall be reasonably segregated from those designated for the other candidate. If sufficient space to accommodate the above needs is not available at a particular debate facility, the Commission shall provide trailers or alternative space mutually agreeable to the candidates' representatives. Space that is comparable in terms of size, location, and quality shall be provided to the two campaigns. These rooms shall be

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made available at least seventy two (72) hours in advance of the beginning of each debate. Each campaign may, at its own cost, rent one or more additional trailers so long as the Commission and authorities responsible for traffic and security do not object.

- (c) The number of individuals allowed in these rooms or trailers shall be determined by each candidate. The Commission shall issue backstage passes (if needed) to the candidates' representatives as requested.
- (d) The Commission shall provide each candidate with a direct television feed from the production truck to two (2) monitors placed in the candidate's dressing room and staff holding rooms as requested by the candidates' representatives. In addition, the Commission shall provide at least one (1) additional functioning TV set for each of the eight rooms.

13. Media

- (a) Each candidate will receive not fewer than thirty (30) press passes for the Media Center during the debate and more if mutually agreed upon by the Committees.

- (b) Each candidate will be allowed to have an unlimited number of people in the Media Center upon the conclusion of the debate.
- (c) The Commission will be responsible for all media credentialing.

14. Survey Research

The sponsor of the debates shall agree that it shall not, prior to November 8, 2000, release publicly or to the media or otherwise make publicly available any survey research (including polls or focus group results or data) concerning the performance of the candidates in the debate or the preferences of the individuals surveyed for either candidate.

15. Complete Agreement

This memorandum of understanding constitutes the entire agreement between the parties concerning the debates in which the campaigns participate in 2000. It supercedes the Preliminary Agreement between the parties signed on September 16, 2000, which Preliminary Agreement is now null and void.

16. Amendments

This Agreement will not be changed or amended except in writing signed by both persons who signed this Agreement or their designees.

Memorandum of Understanding
draft
9/28/00
Page 31

Gora/Leberman, Inc.

By: [Signature]

Date: 9-28-00

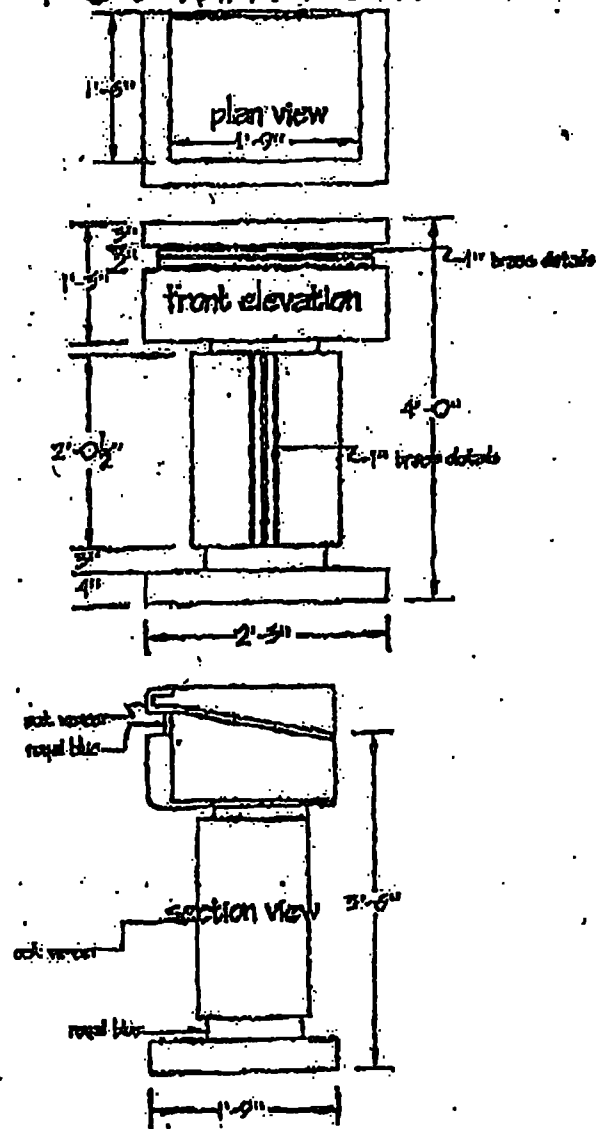
Bush/Cheney, Inc.

By: [Signature]

Date: 9/28/00

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TAB G

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding constitutes an agreement between Kerry-Edwards, '04, Inc. and Bush-Cheney, '04, Inc. (the "campaigns") regarding the rules that will govern debates in which the campaigns participate in 2004. This agreement shall be binding upon the Bush-Cheney and Kerry-Edwards Campaigns and, provided it agrees to sponsor the debates by executing this agreement on or before September 22, 2004, upon the Commission on Presidential Debates (the "Commission").

1. Number, Dates, Time, Locations, Topics

(a) Presidential Debates

<u>Date</u>	<u>Location</u>
Thursday, September 30	University of Miami Coral Gables, Florida
Friday, October 8	Washington University in St. Louis St. Louis, Missouri
Wednesday, October 13	Arizona State University Tempe, Arizona

(b) Vice Presidential Debate

<u>Date</u>	<u>Location</u>
Tuesday, October 5	Case Western Reserve University Cleveland, Ohio

(c) Each debate shall begin at 9 p.m., Eastern Daylight Time.

(d) The parties agree that they will not (1) issue any challenges for additional debates, (2) appear at any other debate or adversarial forum with any

other presidential or vice presidential candidate, or (3) accept any television or radio air time offers that involve a debate format or otherwise involve the simultaneous appearance of more than one candidate.

- (e) The topic of the September 30 debate shall be foreign policy and homeland security. The topic of the October 13 debate shall be economic and domestic policy. The October 5 vice presidential debate and the October 8 presidential debate shall not be limited by topic and shall include an equal number of questions related to foreign policy and homeland security on the one hand and economic and domestic policy on the other.

2. Sponsorship

The two campaigns will participate in four debates sponsored by the Commission. However, if the Commission fails to execute this agreement on or before September 22, 2004, the two campaigns shall each have the option of terminating this agreement, or by agreement between them, seeking other sponsors for some or all of the proposed debates. The parties agree that the Commission's Nonpartisan Candidate Selection Criteria for 2004 General Election Debate Participation shall apply in determining the candidates to be invited to participate in these debates.

3. Participants

If one or more candidates from campaigns other than

the two (2) signatories is invited to participate pursuant to those Selection Criteria, those candidates shall be included in the debates, if those candidates accept the terms of this agreement. Any modifications to this agreement must be agreed upon by each of the signatories to this agreement as well as all other candidates selected to join the debate.

4. Moderator

- (a) Each debate will have a single moderator.
- (b) The parties have accepted the Commission's recommendations of the below listed moderators, provided that each proposed moderator executes a copy of this agreement at least seven (7) days prior to the debate that individual is to moderate in order to evidence his or her understanding and acceptance of, and agreement to, the provisions hereof pertaining to moderators. If any proposed moderator fails to execute a copy of this agreement at least seven (7) days prior to the proposed date of the debate he or she is to moderate, the two campaigns will agree upon and select a different individual to moderate that debate:
 - i) Jim Lehrer for the first presidential debate, September 30, 2004 at the University of Miami;
 - ii) Charles Gibson for the second presidential debate, October 8, 2004 at Washington University in St. Louis;

- iii) Bob Schieffer for the third presidential debate,
October 13, 2004 at Arizona State University,
and;
iv) Gwen Ifill for the vice presidential debate,
October 5, 2004 at the Case Western Reserve
University.

5. Rules Applicable to All Debates

The following rules shall apply to each of the four
debates:

- (a) Each debate shall last for ninety (90) minutes.
- (b) For each debate there shall be no opening statements,
but each candidate may make a two (2) minute closing
statement.
- (c) No props, notes, charts, diagrams, or other writings
or other tangible things may be brought into the
debate by any candidate. Neither candidate may
reference or cite any specific individual sitting in a
debate audience at any time during a debate. If a
candidate references or cites any specific
individual(s) in a debate audience, or if a candidate
uses a prop, note, or other writing or other tangible
thing during a debate, the moderator must interrupt
and explain that reference or citation to the specific
individual(s) or the use of the prop, note, or other
writing or thing violates the debate rules agreed to
by that candidate.

(d) Notwithstanding subparagraph 5(c), the candidates may take notes during the debate on the size, color, and type of paper each prefers and using the type of pen or pencil that each prefers. Each candidate must submit to the staff of the Commission prior to the debate all such paper and any pens or pencils with which a candidate may wish to take notes during the debate, and the staff of the Commission will place such paper, pens, and pencils on the podium, table, or other structure to be used by the candidate in that debate.

(e) Neither film footage nor video footage nor any audio excerpts from the debates may be used publicly by either candidate's campaign through any means, including but not limited to, radio, television, internet, or videotapes, whether broadcast or distributed in any other manner.

(f) The candidates may not ask each other direct questions, but may ask rhetorical questions.

(g) The order of questioning and closing statements shall be determined as follows:

(i) The Commission will conduct a coin toss at least seventy-two (72) hours before the first presidential debate. At that time, the winner of the coin toss shall have the option of choosing,

for the September 30 debate, either (a) whether to take the first or second question, or (b) whether to give the first or second closing statement. At that time, the loser of the coin toss will have the choice of question order or closing statement order not exercised by the winner of the coin toss. For the October 8 debate, the loser of the coin toss shall have the option of choosing either (a) whether to take the first or second question, or (b) whether to give the first or second closing statement, with the winner of the coin toss having the choice of question order or closing statement not exercised by the loser of the coin toss. The Commission shall set a time at least seventy-two (72) hours before the October 8 debate at which the candidates shall make their choices for that debate.

(ii) For the October 13 debate, the order of questioning and closing statements shall be determined by a separate coin toss in the same manner as the September 30 debate, to take place at least seventy-two (72) hours before the debate.

(iii) The order of questioning and closing statements for the October 5 vice presidential

debate shall be determined by a separate coin
toss in the same manner as for the September 30
debate, to take place at least seventy-two (72)
hours before the debate.

- (h) Each candidate shall determine the manner by which he
prefers to be addressed by the moderator and shall
communicate this to the Commission, at least forty-
eight (48) hours before the September 30 debate.
- (i) Whether or not a debate runs beyond the planned ending
time, each candidate shall be entitled to make a
closing statement in accordance with subparagraph (b).
The Commission shall use its best efforts to ensure
that the TV networks carry the entire debate even if
it runs past the specified ending time.
- (j) No question shall be asked of a candidate by the
moderator if less than six (6) minutes remain in the
scheduled time of the debate.
- (k) The candidates shall not address each other with
proposed pledges.
- (l) In each debate, the moderator shall:
- (i) open and close the debate and enforce all time
limits. In each instance where a candidate
exceeds the permitted time for comment, the
moderators shall interrupt and remind both the
candidate and the audience of the expiration of
the time limit and call upon such candidate to

observe the strict time limits which have been agreed upon herein by stating, "I am sorry... [Senator Kerry or President Bush as the case may be]... your time is up";

- (ii) use his or her best efforts to ensure that the questions are reasonably well balanced in all debates and within the designated subject matter areas of the September 30 and October 13 debates in terms of addressing a wide range of issues of major public interest facing the United States and the world;
- (iii) vary the topics on which he or she questions the candidates and ensure that the topics of the questions are fairly apportioned between the candidates;
- (iv) use best efforts to ensure that the two candidates speak for approximately equal amounts of time during the course of each debate, and;
- (v) use any reasonable method to ensure that the agreed-upon format is followed by the candidates and the audience.

6. Additional Rules Applicable to September 30 and October 13

Debates

For the September 30 and October 13 debates, the candidates will appear at podiums. The September 30 and October

13 debates shall be governed by the rules set forth in section 5 and the following additional rules:

(a) There shall be no audience participation in the September 30 and October 13 debates. After the start of each debate and in the event of and in each instance whereby an audience member(s) attempts to participate in the debate by any means thereafter, the moderator shall instruct the audience to refrain from any participation in the debates as described in section 9(a)(viii) below. The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(g). The candidate receiving the question shall be entitled to give an opening response not to exceed two (2) minutes, and thereafter the other candidate shall be permitted to comment on the question and/or the first candidate's answer for up to one and one-half (1½) minutes. Thereafter the moderator in his discretion may extend the discussion for a period of time not to exceed sixty (60) seconds, but the moderator shall begin each such discussion by calling upon the candidate who first received the question. To the extent that the moderator opens extended discussion, the moderator shall use best efforts to ensure that each candidate has a maximum of approximately thirty (30) seconds to comment in the extended discussion period.

(b) The moderator shall then ask a question of the other candidate, and the answer, comments by the other candidate, and extension of discussion by the

moderator shall be conducted as set out in paragraph 6(a) above for the first question. Thereafter the moderator shall follow the procedure in paragraph 6(a) above by asking a question of the first candidate and shall continue with questions of the candidates in rotation until the time for closing statements occurs.

- (c) During the extended discussion of a question, no candidate may speak for more than thirty (30) seconds.
- (d) The moderator shall manage the debate so that the candidates address at least sixteen (16) questions.
- (e) At no time during these debates shall either candidate move from their designated area behind their respective podiums.

7. Additional Rules Applicable to October 8 Debate

The October 8 debate will be conducted in an audience participation ("town hall") format. This debate shall be governed by the rules set forth in section 5 and the following additional rules:

- (a) There shall be no audience participation in the October 8 debate other than as described below. Other than an audience member asking a question as permitted by this section, at the start of the October 8 debate and in the event of and in each instance whereby an audience member(s) attempts to participate in the debate by any means thereafter, the moderator shall instruct the audience to refrain from

any participation in the debate as described in section 9(a)(viii) below. The moderator shall facilitate audience members in asking questions to each of the candidates, beginning with the candidate determined by the procedure set forth in subparagraph 5(h). The candidate to whom the question is initially directed shall have up to two (2) minutes to respond, after which the other candidate shall have up to one and one-half (1½) minutes to respond to the question and/or to comment on the first candidate's answer. Thereafter, the moderator, in his or her discretion, may extend the discussion of that question for sixty (60) seconds, but the moderator shall begin each such discussion by calling upon the candidate who first received the question. The moderator shall balance additional discussion of the question with the interest in addressing a wide range of topics during the debate. To the extent that the moderator opens extended discussion, the moderator shall use best efforts to ensure that each candidate has a maximum of approximately thirty (30) seconds to comment in the extended discussion period.

- (b) After completion of the discussion of the first question, the moderator shall call upon an audience member to direct a question to the candidate to whom the first question was not directed, and follow the

procedure outlined in paragraph 7(a) above.

Thereafter, the moderator shall follow the procedures in this paragraph by calling upon another audience member to ask a question of the first candidate and shall continue facilitating questions of the candidates in rotation until the time for closing statements occurs.

- (c) During the extended discussion of a question, no candidate may speak for more than thirty (30) seconds.
- (d) The audience members shall not ask follow-up questions or otherwise participate in the extended discussion, and the audience member's microphone shall be turned off after he or she completes asking the question.
- (e) Prior to the start of the debate, audience members will be asked to submit their questions in writing to the moderator. No third party, including both the Commission and the campaigns, shall be permitted to see the questions. The moderator shall approve and select all questions to be posed by the audience members to the candidates. The moderator shall ensure that the audience members pose to the candidates an equal number of questions on foreign policy and homeland security on the one hand and economic and domestic policy on the other. The moderator will further review the questions and eliminate any questions that the moderator deems inappropriate. At

least seven (7) days before the October 8 debate the moderator shall develop, and describe to the campaigns, a method for selecting questions at random, while assuring that questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world. Each question selected will be asked by the audience member submitting that question. If any audience member poses a question or makes a statement that is in any material way different than the question that the audience member earlier submitted to the moderator for review, the moderator will cut-off the questioner and advise the audience that such non-reviewed questions are not permitted. Moreover, the Commission shall take appropriate steps to cut-off the microphone of any such audience member that attempts to pose any question or statement different than that previously posed to the moderator for review.

- (f) The debate will take place before a live audience of between 100 and 150 persons who shall be seated and who describe themselves as likely voters who are "soft" Bush supporters or "soft" Kerry supporters as to their 2004 presidential vote. The number of "soft" Bush supporters shall equal the number of "soft" Kerry supporters in the audience. The moderator shall ensure that an equal number of "soft" Bush supporters

and "soft" Kerry supporters pose questions to the candidates. These participants will be selected by the Gallup organization ("Gallup"). Gallup shall have responsibility for selecting the nationally demographically representative group of voters. At least fourteen (14) days prior to October 8, Gallup shall provide a comprehensive briefing on the selection methodology to the campaigns, and both the Kerry-Edwards Campaign and the Bush-Cheney Campaign shall approve the methodology. Either campaign may raise objections on the methodology to Gallup and to the Commission within twenty-four (24) hours of the briefing.

- (g) Participants selected shall not be contacted directly or indirectly by the campaigns before the debate. The Commission shall not contact the participants before the debate other than for logistical purposes.

8. Additional Rules Applicable to October 5 Debate

For the October 5 vice presidential debate, the candidates will be seated at a table with the moderator. This debate shall be governed by the rules set forth in sections 5 and 6. There shall be no audience participation in the October 5 vice presidential debate. At the start of the October 5 debate and in the event of and in each instance whereby an audience member(s) attempts to participate in the debate by any means thereafter, the moderator shall instruct the audience to refrain

from any participation in the debate as described in section 9(a)(viii) below.

9. Staging

(a) The following rules apply to each of the four debates:

- (i) All staging arrangements for the debates not specifically addressed in this agreement shall be jointly addressed by representatives of the two campaigns.
- (ii) The Commission will conduct a coin toss at least seventy-two hours before the September 30 debate. At that time, the winner of the coin toss shall have the option of choosing stage position for the September 30 debate; The loser of the coin toss will have first choice of stage position for the October 8 debate. The loser of the coin toss or his representative shall communicate his choice by written facsimile to the Commission and to the other campaign at least seventy-two (72) hours before the October 8 debate. The stage position for the October 13 debate will be determined by a coin toss to take place at least seventy-two (72) hours before the debate. The stage position for the October 5 vice presidential debate will be determined by a separate coin toss to take place at least seventy-two (72) hours before the debate.

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- (iii) For the September 30, October 8, and October 13 debates, the candidates shall enter the stage upon a verbal cue by the moderator after the program goes on the air, proceed to center stage, shake hands, and proceed directly to their positions behind their podiums or their stools in the case of the October 8 debate. For the October 5 vice presidential debate, the candidates shall be pre-positioned before the program goes on the air, and immediately after the program goes on the air the candidates shall shake hands.
- (iv) Except as provided in subparagraph (d) (viii) of this paragraph 9, TV cameras will be locked into place during all debates. They may, however, tilt or rotate as needed.
- (v) Except as provided in subparagraph (d) (viii), TV coverage during the question and answer period shall be limited to shots of the candidates or moderator and in no case shall any television shots be taken of any member of the audience (including candidates' family members) from the time the first question is asked until the conclusion of the closing statements. When a candidate is speaking, either in answering a question or making his closing statement, TV coverage will be limited

to the candidate speaking. There will be no TV cut-aways to any candidate who is not responding to a question while another candidate is answering a question or to a candidate who is not giving a closing statement while another candidate is doing so.

(vi) The camera located at the rear of the stage shall be used only to take shots of the moderator.

(vii) For each debate each candidate shall have camera-mounted, timing lights corresponding to the timing system described in section 9(b) (vi) below positioned in his line of sight. For each debate additional timing lights, corresponding to the timing system described in section 9(b) (vi) below, shall be placed such that they are visible to the debate audiences and television viewers.

(viii) All members of the debate audiences will be instructed by the moderator before the debate goes on the air and by the moderator after the debate goes on the air not to applaud, speak, or otherwise participate in the debate by any means other than by silent observation, except as provided by the agreed upon rules of the October 8 town hall debate. In the event of and in each

instance whereby an audience member(s) attempts to participate in a debate by any means, the moderator shall instruct the audience to refrain from any participation. The moderator shall use his or her best efforts to enforce this provision.

- (ix) The Commission shall use best efforts to maintain an appropriate temperature according to industry standards for the entire debate.
- (x) Each candidate shall be permitted to have a complete, private production and technical briefing and walk-through ("Briefing") at the location of the debate on the day of the debate. The order of the Briefing shall be determined by agreement or, failing candidate agreement, a coin flip. Each candidate will have a maximum of one (1) hour for this Briefing. Production lock-down will not occur for any candidate unless that candidate has had his Briefing. There will be no filming, taping, photography, or recording of any kind (except by that candidate's personal photographer) allowed during the candidates' Briefing. No media will be allowed into the auditorium where the debate will take place during a candidate's Briefing. All persons, including but not limited to the media, other

candidates and their representatives, and the employees or other agents of the Commission, other than those necessary to conduct the Briefing, shall vacate the debate site while a candidate has his Briefing. The Commission will provide to each candidate's representatives a written statement and plan which describes the measures to be taken by the Commission to ensure the complete privacy of all Briefings.

(xi) The color and style of the backdrop will be recommended by the Commission and mutually determined by representatives of the campaigns. The Commission shall make its recommendation known to the campaigns at least seventy-two (72) hours before each debate. The backdrops behind each candidate shall be identical.

(xii) The set will be completed and lit no later than 3 p.m. at the debate site on the day before the debate will occur.

(xiii) Each candidate may use his own makeup person, and adequate facilities shall be provided at the debate site for makeup.

(xiv) In addition to Secret Service personnel, the President's military aide, and the President's physician and the Vice President's military aide

and the Vice President's physician, each candidate will be permitted to have one (1) pre-designated staff member in the wings or in the immediate backstage area during the debate at a location to be mutually agreed upon by representatives of the campaigns at each site. All other staff must vacate the wings or immediate backstage areas no later than five (5) minutes before the debate commences. A PL phone line will be provided between each candidate's staff work area and the producer.

(xv) Other than security personnel not more than two (2) aides will accompany each candidate on the stage before the program begins.

(xvi) Each candidate shall be allowed to have one
(1) professional still photographer present on the stage before the debate begins and in the wings during the debate as desired and on the stage immediately upon the conclusion of the debate. No photos shall be taken from the wings by these photographers during the debate. Photos taken by these photographers may be distributed to the press as determined by each candidate.

(b) In addition to the rules in subparagraph (a) the

following rules apply to the September 30 and October 13 debates:

- (i) The Commission shall construct the podiums and each shall be identical to view from the audience side. The podiums shall measure fifty (50) inches from the stage floor to the outside top of the podium facing the audience and shall measure forty-eight (48) inches from the stage floor to the top of the inside podium writing surface facing the respective candidates, and otherwise shall be constructed in the style and specifications recommended by the Commission, shown in attachment A. There shall be no writings or markings of any kind on the fronts of the podiums. No candidate shall be permitted to use risers or any other device to create an impression of elevated height, and no candidate shall be permitted to use chairs, stools, or other seating devices during the debate.
- (ii) Each podium shall have installed a fixed hardwired microphone, and an identical microphone to be used as backup per industry standards.
- (iii) The podiums will be equally canted toward the center of the stage at a degree to be determined by the Commission's producer. The

podiums shall be ten (10) feet apart; such distance shall be measured from the left-right center of a podium to the left-right center of the other podium.

(iv) The moderator will be seated at a table so as to be positioned in front, between, and equidistant from the candidates, and between the cameras to which the candidates direct their answers.

(v) As soon as possible, the Commission shall submit for joint consultation with the campaigns a diagram for camera placement.

(vi) At least seven (7) days before the September 30 debate the Commission shall recommend a system, to be used as a model for each successive debate, of visible and audible time cues and placement subject to approval by both campaigns. Such a system shall be comprised of camera mounted timing lights placed in the line of sight of each candidate and additional timing lights that are clearly visible to both the debate audiences and television viewers. Time cues in the form of colored lights will be given to the candidates and the moderator when there are thirty (30) seconds remaining, fifteen (15) seconds remaining, and five (5) seconds remaining,

respectively for the two (2) minute, one and one-half (1½) minute, and sixty (60) second response times permitted under section 6(a). Pursuant to Section 5(1)(i) the moderators shall enforce the strict time limits described in this agreement. The Commission shall provide for an audible cue announcing the end of time for each of the candidate's responses, rebuttals and rejoinder time periods to be used in the event the moderator(s) fail to take action to enforce the strict time limits described in this Agreement. The audible cue shall be clearly audible to both candidates, the debate audiences and television viewers. The Commission shall commence the use of the audible cue and continue its use through the conclusion of any debate where a moderator fails to take the action described in Section 5(1)(i) after two (2) instances in which either candidate has exceeded the time for responses, rebuttals, or rejoinders described in this Agreement.

(c) In addition to the rules in subparagraph (a), the following rules apply to the October 5 vice presidential debate:

(i) The Commission shall construct the table according to the style and specifications

proposed by the Commission in consultation with each campaign. The moderator shall be facing the candidates with his or her back to the audience.

- (ii) The chairs shall be swivel chairs that can be locked in place, and shall be of equal height.
- (iii) Each candidate and the moderator shall have a wireless lapel microphone, and an identical microphone to be used as a backup per industry standards.
- (iv) At least seven (7) days before the October 5 debate the Commission shall recommend a system of time cues and placement subject to approval by both campaigns and consistent with the visual and audible time cues described in section 9(b) (vi).
- (v) As soon as possible, the Commission shall submit for joint consultation with each campaign a diagram for camera placement.
- (vi) The candidates shall remain seated throughout the debate.

(d) In addition to the rules in subparagraph (a), the following rules apply to the October 8 debate:

- (i) The candidates shall be seated on stools before the audience, which shall be seated in approximately a horseshoe arrangement as

symmetrically as possible around the candidates. The precise staging arrangement will be determined by the Commission's producer subject to the approval of representatives of both campaigns.

- (ii) The stools shall be identical and have backs and a footrest and shall be approved by the candidates' representatives.
- (iii) Each candidate shall have a place to put a glass of water and paper and pens or pencils for taking notes (in accordance with subparagraph 5(d)) of sufficient height to allow note taking while sitting on the stool, and which shall be designed by the Commission, subject to the approval of representatives of both campaigns.
- (iv) Each candidate may move about in a predesignated area, as proposed by the Commission in consultation with each campaign, and may not leave that area while the debate is underway. The pre-designated areas of the candidates may not overlap.
- (v) Each candidate shall have a choice of either wireless hand held microphone or wireless lapel microphone to allow him to move about as provided for in subparagraph (iv) above and to

face different directions while responding to questions from the audience.

- (vi) As soon as possible, the Commission shall submit for joint consultation by the campaigns a diagram for camera placement.
- (vii) At least seven (7) days before the October 8 debate the Commission shall recommend a system of time cues subject to approval by both campaigns, and consistent with the visual and audible cues described in sections 9(b) (vi).
- (viii) Notwithstanding sections 9(a) (iv) and 9(a) (v) a roving camera may be used for shots of an audience member only during the time that audience member is asking a question.
- (ix) Prior to the start of the debate neither the moderator nor any other person shall engage in a "warm up" session with the audience by engaging in a question or answer session or by delivering preliminary remarks.

10. Ticket Distribution and Seating Arrangements

- (a) The Commission shall be responsible for printing and ensuring security of all tickets to all debates. Each campaign shall be entitled to receive directly from the Commission one-third of the available tickets (excluding those allocated to the participating audience in the October 8 debate), with the remaining

one-third going to the Commission.

- (b) In the audience participation debate, the participating audience shall be separated from any nonparticipating audience, and steps shall be taken to ensure that the participating audience is admitted to the debate site without contact with the campaigns, the media, or the nonparticipating audience.
- (c) The Commission shall allocate tickets to the two (2) campaigns in such a manner to ensure that supporters of each candidate are interspersed with supporters of the other candidate. For the September 30, October 5, and October 13 debates, the family members of each candidate shall be seated in the front row, diagonally across from the candidate directly in his line of site while seated or standing at the podium. For the October 8 debate, the family members of each candidate shall be seated as mutually agreed by representatives of the campaigns.
- (d) Any media seated in the auditorium shall be accommodated only in the last two (2) rows of the auditorium farthest from the stage. Two (2) still photo stands may be positioned near either side of the television camera stands located in the audience. (A media center with all necessary feeds will be otherwise available.)
- (e) Tickets will be delivered by the Commission to the

chairman of each candidate's campaign or his designated representative by 12:00 noon on the day preceding each debate. The Commission will invite from its allotment (two (2) tickets each) an agreed upon list of officeholders such as the U.S. Senate and House Majority and Minority Leaders, the Governor and Lieutenant Governor of the State holding the debate, an appropriate list of other public officials and the President of the University sponsoring the debate. The Commission shall not favor one candidate over the other in the distribution of its allotment of tickets.

11. Dressing Rooms/Holding Rooms

- (a) Each candidate shall have a dressing room available of adequate size so as to provide private seclusion for that candidate and adequate space for the staff the candidate desires to have in this area. The two (2) dressing rooms shall be comparable in size and in quality and in proximity and access to the debate stage.
- (b) An equal number of other backstage rooms will be available for other staff members of each candidate. Each candidate shall have a minimum of eight (8) such rooms, five (5) of which shall be in the debate facility itself, and three (3) of which shall be located next to the press center. The rooms located

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next to the media center shall be located so that each campaign has equal proximity and ease of access to the media center. Each of the eight (8) rooms shall be a minimum of 10 feet by 10 feet. All of these rooms shall be furnished as deemed necessary by the candidates' representatives. Each candidate's rooms shall be reasonably segregated from those designated for the other candidate. If sufficient space to accommodate the above needs is not available at a particular debate facility, the Commission shall provide trailers or alternative space mutually agreeable to the candidates' representatives. Space that is comparable in terms of size, location, and quality shall be provided to the two campaigns. These rooms shall be made available at least seventy-two (72) hours in advance of the beginning of each debate. Each campaign may, at its own cost, rent one or more additional trailers so long as the Commission and authorities responsible for traffic and security do not object.

- (c) The number of individuals allowed in these rooms or trailers shall be determined by each candidate. The Commission shall issue backstage passes (if needed) to the candidates' representatives as requested.
- (d) The Commission shall provide each candidate with a direct television feed from the production truck to

two (2) monitors placed in the candidate's dressing room and staff holding rooms as requested by the candidates' representatives. In addition, the Commission shall provide at least one (1) additional functioning TV set for each of the eight (8) rooms.

12. Media

- (a) Each candidate will receive not fewer than thirty (30) press passes for the Media Center during the debate and more, if mutually agreed upon by the campaigns.
- (b) Each candidate will be allowed to have an unlimited number of people in the Media Center upon the conclusion of the debate.
- (c) The Commission will be responsible for all media credentialing.

13. Survey Research

The sponsor of the debates agrees that it shall not, prior to two days after the Presidential Inauguration of 2005, release publicly or to the media or otherwise make publicly available any survey research (including polls or focus group results or data) concerning the performance of the candidates in the debate or the preferences of the individuals surveyed for either candidate.

14. Complete Agreement

This memorandum of understanding constitutes the entire agreement between the parties concerning the debates in

which the campaigns will participate in 2004.

15. Amendments

This Agreement will not be changed or amended except in writing signed by those persons who signed this Agreement or their designees.

16. Ratification and Acknowledgement

The undersigned moderators selected by the Commission agree to the terms contained herein and agree to fulfill their responsibilities as described in the Agreement.

Agreed and Accepted:

Bush-Cheney '04, Inc.

By: Kenneth B. Mehlman

Printed Name: Kenneth B. Mehlman

Title: Campaign Manager

Executed on September 20, 2004

Kerry-Edwards '04, Inc.

By: M. F. Cahill

Printed Name: M. F. Cahill

Title: Campaign Manager

Executed on September 20, 2004

The Commission on Presidential Debates

By: _____

Printed Name: _____

Title: _____

Executed on September _____, 2004

The provisions hereof pertaining to moderators are understood, agreed to and accepted:

Jim Lehrer (Date Executed)

Charles Gibson (Date Executed)

Bob Schieffer (Date Executed)

Gwen Ifill (Date Executed)

TAB H

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding constitutes an agreement between Obama for America and John McCain for President (the "campaigns") regarding the rules that will govern debates in which the campaigns participate in 2008. This agreement shall be binding upon the campaigns.

1. Number, Dates, Time, Locations, Topics

(a) Presidential Debates

<u>Date</u>	<u>Location</u>
Friday, September 26	University of Mississippi Oxford, Mississippi
Tuesday, October 7	Belmont University Nashville, Tennessee
Wednesday, October 15	Hofstra University Hempstead, New York

(b) Vice Presidential Debate

<u>Date</u>	<u>Location</u>
Tuesday, October 2	Washington University St. Louis, Missouri

(c) Each debate shall begin at 9 p.m. Eastern Daylight Time.

(d) The parties agree that they will not (1) issue any challenges for additional debates, (2) appear at any other debate or adversarial forum with any other

presidential or vice presidential candidate, or (3) accept any television or radio air time offers that involve a debate format or otherwise involve the simultaneous appearance of more than one candidate.

(e) The topic of the September 26 (First Presidential) debate shall be foreign policy and national security. The topic of the October 15 (Third Presidential) debate shall be domestic and economic policy. The October 2 (Vice Presidential) debate and the October 7 (Second Presidential) debate shall not be limited by topic and shall include an equal number of questions related to foreign policy and national security, on the one hand, and domestic and economic policy on the other.

2. Sponsorship

The two campaigns will participate in four debates sponsored by the Commission on Presidential Debates (the "Commission"). The Campaigns agree that the Commission shall sponsor the debates, subject to its expression of a willingness to employ the provisions of this agreement in conducting these debates. In the event the Commission does not so agree, the two campaigns jointly reserve the right to determine whether an alternate sponsor is preferable. The parties agree that the Commission's Nonpartisan

Candidate Selection Criteria for 2008 General Election

Debate participation shall apply in determining the candidates to be invited to participate in these debates.

3. Participants

If one or more candidates from campaigns other than the two (2) signatories are invited to participate pursuant to those Selection Criteria, those candidates shall be included in the debates, if those candidates accept the terms of this agreement. Any modifications to this agreement must be agreed upon by each of the signatories to this agreement as well as all other candidates selected to join the debate.

4. Moderator

(a) Each debate will have a single moderator.

(b) The parties have accepted the Commission's recommendations of the below-listed moderators. The Commission shall provide each moderator with a copy of this agreement and shall use its best efforts to ensure that the moderators implement the terms of this agreement.

(i) Jim Lehrer for the First Presidential debate, September 26, 2008 at the University of Mississippi.

(ii) Tom Brokaw for the Second Presidential debate, October 7, 2008 at Belmont University.

(iii) Bob Schieffer for the Third Presidential debate, October 15, 2008 at Hofstra University.

(iv) Gwen Ifill for the Vice Presidential debate, October 2, 2008 at Washington University.

5. Rules Applicable to All Debates

The following rules shall apply to each of the four debates:

(a) Each debate shall last for ninety (90) minutes, with the time commencing from the start of the moderator's opening to the conclusion of the moderator's closing.

(b) For each debate, there shall be no opening statements and no closing statements; provided, however, that each candidate may make a ninety (90) second closing statement at the close of the Third Presidential debate and at the close of the Vice Presidential debate. The order of these closing statements shall be determined by coin toss.

(c) No props, notes, charts, diagrams, or other writings or other tangible things may be brought into the debate by any candidate. No candidate may reference or cite any specific individual sitting in a debate audience (other than family members) at any time during a debate.

THE STANLEY LINDBERG

$$\begin{aligned} \mathcal{L}(\mathbf{y}|\mathbf{X}) &= \prod_{i=1}^n \mathcal{L}(y_i|\mathbf{X}_i) \\ &= \prod_{i=1}^n \frac{1}{\sigma^2} \exp\left(-\frac{1}{2\sigma^2}(\mathbf{X}_i^T \boldsymbol{\beta} - y_i)^2\right) \end{aligned}$$

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question. At that time, the loser of the coin toss will have the choice of question order for the October 15 (Third Presidential) debate. For the October 7 (Second Presidential-Town Hall) debate, there shall be a separate coin toss, with the winner choosing whether to take the first or second question. The Commission shall set a time at least seventy-two (72) hours before the October 7 (Second Presidential-Town Hall) debate at which the candidates shall make their choices for that debate.

(h) Each candidate for president shall be addressed by the moderator as "Senator _____".

(i) The candidates shall not address each other with proposed pledges.

(j) In each debate, the moderator shall:

(i) Open and close the debate and enforce all time limits. Where a candidate exceeds the permitted time for comment, the moderator shall interrupt and remind both the candidate and the audience of the expiration of the time limit and call upon such candidate to observe the strict time limits that have been agreed upon herein.

(ii) Use his or her best efforts to ensure that the questions are reasonably well balanced in all debates and within the designated subject matter areas of the September 26 (First Presidential) debate and October 15

(Third Presidential) debate in terms of addressing a wide range of issues of major public interest facing the United States and the world.

(iii) Vary the topics on which he or she questions the candidates and ensure that the topics of the questions are fairly apportioned between the candidates.

(iv) Use best efforts to ensure that the two candidates speak for approximately equal amounts of time during the course of each debate.

(v) Use any reasonable method to ensure that the agreed-upon format is followed by the candidates and the audience.

(k) At no debate shall the moderator ask the candidates for a "show of hands" or similar calls for response.

6. Additional Rules Applicable to the September 26 and October 15 Debates

For the September 26 (First Presidential) debate, the candidates will appear at podiums. For the October 15 (Third Presidential) debate, the candidates shall be seated jointly at a table, in a style similar to previous presidential debates employing that format. The September 26 (First Presidential) debate and October 15 (Third

Presidential) debate shall be governed by the rules set forth in section 5 and the following additional rules:

(a) There shall be no audience participation in the September 26 (First Presidential) debate and October 15 (Third Presidential) debate. After the start of each debate and in the event of and in each instance whereby an audience member(s) attempts to participate in the debate by any means thereafter, the moderator shall instruct the audience to refrain from any participation in the debates as described in section 9(a) (viii) below. The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(g) of section 5.

(b) The debate shall be broken into nine, 9-minute segments. Each segment will begin with the moderator introducing a topic and giving each candidate 2 minutes to comment on the topic. After these initial answers, the moderator will facilitate an open discussion of the topic for the remaining 5 minutes, ensuring that both candidates receive an equal amount of time to comment. The candidates will reverse the order of response to the next and subsequent questions.

(c) At no time during these debates shall either candidate move from their designated area behind their respective podiums.

7. Additional Rules Applicable to the October 7 Debate

The October 7 (Second Presidential) debate will be conducted in an audience participation ("Town Hall") format. This debate shall be governed by the rules set forth in section 5 (as applicable) and the following additional rules:

(a) There shall be no audience participation in the October 7 (Second Presidential-Town Hall) debate other than as described below. Other than for an audience member asking a question as permitted by this section, at the start of the October 7 (Second Presidential-Town Hall) debate and in the event of and in each instance whereby an audience member(s) attempts to participate in the debate by any means thereafter, the moderator shall instruct the audience to refrain from any participation in the debate as described in section 9(a)(viii) below. The moderator shall facilitate audience members in asking questions to each of the candidates, beginning with the candidate determined by the procedure set forth in subparagraph 5(g). The answer segments will be structured as follows: A question is

asked of Candidate A. That candidate will respond to the question for up to 2 minutes. Candidate B will then have 2 minutes to respond. Following those initial answers, the moderator will invite the candidates to respond to the previous answers, beginning with Candidate A, for a total of 1 minute (30 seconds each candidate), ensuring that both candidates receive an equal amount of time to comment. The candidates will reverse the order of responses to the next question.

(b) After completion of the discussion of the first question, the moderator shall call upon another audience member to direct a question to the candidate to whom the first question was not directed, and follow the procedure outlined in paragraph 7(a) above. Thereafter, the moderator shall follow the procedures in this paragraph by calling upon another audience member to ask a question of the first candidate and shall continue facilitating questions of the candidates in rotation.

(c) With respect to all questions:

(i) The moderator shall select the questioners, but he may not "coach" the questioners.

(ii) Questioners shall not be allowed to make statements, speeches, or comments. They must ask their question and make no other comments.

(iii) The moderator shall use questions submitted from the Internet, with the questions submitted in a manner agreed to by the candidates, and those questions shall consist of approximately one-third (no more, no less) of the total questions asked.

(iv) The moderator will not ask follow-up questions or comment on either the questions asked by the audience or the answers of the candidates during the debate or otherwise intervene in the debate except to acknowledge the questioners from the audience or internet, enforce the time limits, and invite candidate comments during the 2 minute response period.

(v) The two campaigns shall agree upon a method for selection of the audience for the town hall debate pursuant to subparagraph (f) below.

(d) The audience members shall not ask follow-up questions or otherwise participate in the extended discussion, and the audience member's microphone shall be turned off after he or she completes asking the questions.

(e) Prior to the start of the debate, audience members will be asked to submit their questions in writing to the moderator. No third party, including both the Commission and the campaigns, shall be permitted to see the questions. The moderator shall approve all questions to be

posed by the audience members to the candidates. The moderator shall ensure that the audience members pose to the candidates an equal number of questions on foreign policy and national security, on the one hand, and domestic and economic policy on the other. The moderator will further review the questions and eliminate any questions that the moderator deems inappropriate. At least seven (7) days before the October 7 (Second Presidential-Town Hall) debate, the moderator shall develop, and describe to the campaigns, a method for selecting questions at random while assuring that questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world. Each question selected will be asked by the audience member submitting that question. If any audience member poses a question or makes a statement that is in any material way different than the question that the audience member earlier submitted to the moderator for review, the moderator will cut-off the questioner and advise the audience that such non-reviewed questions are not permitted. Moreover, the Commission shall take appropriate steps to cut-off the microphone of any such audience member who attempts to pose any question or statement different than that previously posed to the moderator for review.

following the same basic rules and staging provisions (except as otherwise noted here) for the September 26 (First Presidential) debate and the October 15 (Third Presidential) debate (e.g., simultaneous live entry). There shall be no audience participation of any kind. The stage position for each candidate shall be determined by a flip of the coin, witnessed by the campaigns' representatives, no less than 72 hours before the start of the debate.

(a) The moderator shall ask questions of each candidate in alternating order with the recipient of the first question determined by a flip of the coin, witnessed by the campaigns' representatives, no less than 72 hours before the start of the debate. When asked a question, the first candidate will have 60 seconds in which to respond, the second candidate will have 90 seconds to comment on the response, and the first candidate will have a 30 second rebuttal.

(b) There will be no opening statements. Each candidate shall have 90 seconds in which to make a closing statement with the order of those statements determined by a flip of the coin, witnessed by the campaigns' representatives, no less than 72 hours before the start of the debate. The moderator shall take steps to ensure that

each candidate has the full 90 seconds provided in this paragraph, and the Commission shall take steps to ensure that the closing statements are included in the nationwide broadcast, notwithstanding any other provision in this agreement.

(c) If there are any discrepancies between this paragraph and any other provision of this agreement, the provisions of this paragraph shall govern. Any issues not anticipated by this paragraph or the agreement shall be resolved at the debate site by the campaigns' representatives and, failing a resolution, by a coin flip.

(d) The candidates shall be addressed by their respective titles as elected public officials: "Governor" and "Senator," as the case may be.

9. Staging

(a) The following rules apply to each of the four debates:

(i) All staging arrangements for the debates not specifically addressed in this agreement shall be jointly addressed and agreed to by representatives of the two campaigns. In this regard, the Commission staff -- including the broadcast producer -- shall meet at least once daily and simultaneously with a representative of each

campaign, and the Commission shall provide reasonable daily access to the stage and debate site, on an equal basis but not simultaneously, for each campaign.

(ii) The Commission will conduct a coin toss at least seventy-two hours before the September 26 (First Presidential) debate. At that time, the winner of the coin toss shall have the option of choosing stage position for the September 26 debate; the loser of the coin toss will have first-choice of stage position for the October 15 (Third Presidential) debate. The loser of the coin toss or his representative shall communicate his stage position choice by written facsimile to the Commission and to the other campaign at least seventy-two (72) hours before the October 15 (Third Presidential) debate. The stage position for the October 7 (Second Presidential-Town Hall) debate will be determined by a coin toss to take place at least seventy-two (72) hours before the debate. The stage position for the October 2 (Vice Presidential) debate will be determined by a separate coin toss to take place at least seventy-two (72) hours before that debate.

(iii) For the September 26 (First Presidential) debate, October 7 (Second Presidential-Town Hall) debate, and October 15 (Third Presidential) debate, the candidates shall enter the stage simultaneously, from opposite ends of

the stage, upon a verbal cue by the moderator after the program goes on the air, proceed to center stage, shake hands, and proceed directly to their positions.

(iv) Except as provided in subparagraph (d) (viii) of this paragraph 9, TV cameras will be locked into place during all debates. They may, however, tilt or rotate as needed to frame the candidate or moderator.

(v) Except as provided in subparagraph 9(d) (viii), TV coverage during the question and answer period shall be limited to shots of the candidates or moderator, and in no case shall any television shots be taken of any member of the audience (including candidates' family members) from the time the first question is asked until the conclusion of the closing statements, if any. When a candidate is speaking, either in answering a question or making his closing statement, TV coverage will be limited to the candidate speaking. There will be no TV cut-aways to any candidate who is not responding to a question while another candidate is answering a question or to a candidate who is not giving a closing statement while another candidate is doing so.

(vi) The camera located at the rear of the stage shall be used only to take shots of the moderator.

(vii) For each debate, each candidate shall have camera-mounted, timing lights corresponding to the timing system described in section 9(b)(vi) below positioned in his or her line of sight.

(viii) All members of the debate audience will be instructed by the moderator before the debate goes on the air -- and by the moderator after the debate goes on the air -- not to applaud, speak, or otherwise participate in the debate by any means other than by silent observation, except as provided by the agreed upon rules of the October 7 town hall debate. In the event of and in each instance whereby an audience member(s) attempts to participate in a debate by any means, the moderator shall instruct the audience to refrain from any participation. The moderator shall use his or her best efforts to enforce this provision.

(ix) The Commission shall use best efforts to maintain an appropriate temperature as agreed to by the campaigns.

(x) Each candidate shall be permitted to have a complete, private production and technical briefing and walk-through ("Briefing") at the location of the debate on the day of the debate. The order of the Briefing shall be determined by agreement or, failing candidate agreement, a

coin flip. Each candidate will have a maximum of one (1) hour for this Briefing. Production lock-down will not occur for any candidate unless that candidate has had his or her Briefing. There will be no filming, taping, photography, or recording of any kind (except by that candidate's personal photographer) allowed during the candidates' Briefing. No media, other than as stated herein, will be allowed into the auditorium where the debate will take place during a candidate's Briefing. All persons, including but not limited to the media, other candidates and their representatives, and the employees or agents of the Commission, other than those necessary to conduct the Briefing, shall vacate the debate site while a candidate has his or her Briefing. The Commission will provide to each candidate's representatives a written statement and plan which describes the measures to be taken by the Commission to ensure the complete privacy of all briefings.

(xi) The color and style of the backdrop will be recommended by the Commission and agreed to by representatives of the campaigns. The Commission shall make its recommendation known to the campaigns at least seventy-two (72) hours before each debate. The backdrops behind each candidate shall be identical.

(xii) The set will be completed and lit no later than 3 p.m. at the debate site on the day before the debate will occur.

(xiii) Each candidate may use his or her own makeup person, and adequate facilities shall be provided by the Commission at the debate site for makeup.

(xiv) In addition to Secret Service personnel, each candidate will be permitted to have one (1) pre-designated staff member in the wings or in the immediate backstage area during the debate at a location to be mutually agreed upon by representatives of the campaigns at each site. All other staff must vacate the wings or immediate backstage areas no later than five (5) minutes before the debate commences. A PL phone line will be provided between each candidate's staff work area and the broadcast producer.

(xv) Each candidate shall be allowed to have one (1) professional still photographer present on the stage before the debate begins and in the wings during the debate as desired and on the stage immediately upon the conclusion of the debate. No photos shall be taken from the wings by these photographers during the debate. Photos taken by these photographers may be distributed to the press as determined by each candidate. In addition, the press pool

accompanying each candidate shall be included in a pool to be formed by the Commission for pre- and post-debate photography from the buffer zone.

(b) In addition to the rules in subparagraph (a), the following rules apply to the September 26 (First Presidential) debate and the October 2 (Vice Presidential) debate:

(i) The Commission shall construct the podiums and each shall be identical to view from the audience side. The podiums shall measure fifty (50) inches from the stage floor to the outside top of the podium facing the audience and shall measure forty-eight (48) inches from the stage floor to the top of the inside podium writing surface facing the respective candidates, and, otherwise shall be constructed in the style and specifications recommended by the Commission, shown in Attachment A, and approved by the campaigns. There shall be no writings or markings of any kind on the fronts of the podiums. No candidate shall be permitted to use risers or any other device to create an impression of elevated height, and no candidate shall be permitted to use chairs, stools, or other seating devices during the debate.

(ii) Each podium shall have installed a fixed hardwired microphone, and an identical microphone to be

used as backup per industry standards, and approved by the campaigns.

(iii) The podiums will be equally canted toward the center of the stage at a degree to be determined by the Commission's producer and approved by the campaigns. The podiums shall be ten (10) feet apart; such distance shall be measured from the left-right center of a podium to the left-right center of the other podium.

(iv) The moderator will be seated at a table so as to be positioned in front, between, and equidistant from the candidates, and between the cameras to which the candidates direct their answers.

(v) At least ten days before each debate, the Commission shall submit for joint approval of the campaigns a diagram for camera placement, set design, and room configuration to include the audience seating breakdown.

(vi) Time cues solely in the form of colored lights will be given to the candidates and the moderator when there are thirty (30) seconds remaining, fifteen (15) seconds remaining, and five (5) seconds remaining, respectively for the two (2) minute and other timed answers and the 90-second closing statement. Pursuant to Section 5(j)(1), the moderators shall enforce the strict time limits described in this agreement.

(c) In addition to the rules in subparagraph (a), the following rules apply to the October 7 (Second Presidential-Town Hall) debate:

(i) The candidates shall be seated on director chairs (with backs) -- or similar chairs acceptable to the campaigns -- before the audience, which shall be seated in approximately a horseshoe arrangement as symmetrically as possible around the candidates. The precise staging arrangements will be determined by the Commission's producer subject to the approval of representatives of both campaigns.

(ii) The chairs shall be identical and have backs and a footrest and shall be approved by the candidates' representatives.

(iii) Each candidate shall have a place to put a glass of water and paper and pens or pencils for taking notes (in accordance with section 5, subparagraph 5(d)) of sufficient height to allow note taking while sitting on the chair, and which shall be designed by the Commission, subject to the approval of representatives of both campaigns.

(iv) Each candidate may move about in a pre-designated area, as proposed by the Commission and approved by each campaign, and may not leave that area while the

debate is underway. The pre-designated areas of the candidates may not overlap.

(v) Each candidate shall use a wireless hand held microphone (with appropriate back-up) to allow him to move about and to face different directions while responding to questions from the audience.

(vi) At least ten days before each debate, the Commission shall submit for approval by the campaigns a diagram for camera placement, set design, and room configuration to include the audience seating breakdown.

(vii) At least seven (7) days before the October 7 (Second Presidential-Town Hall) debate, the Commission shall recommend a system of time cues subject to approval by both campaigns and consistent with the cues described in sections 9(b)(vi).

(viii) Notwithstanding sections 9(a)(iv) and 9(a)(v), a roving camera may be used for shots of an audience member only during the time that audience member is asking a question.

(ix) Prior to the start of the debate, neither the moderator nor any other person shall engage in a "warm up" session with the audience by engaging in a question or answer session or by delivering preliminary remarks.

10. Ticket Distribution and Seating Arrangements

(a) The Commission shall be responsible for printing and ensuring security of all tickets to all debates. Each campaign shall be entitled to receive directly from the Commission two-fifths of the available tickets (excluding those allocated to the participating audience in the October 7 debate), with the remaining one-fifth going to the Commission. The Commission and the campaigns shall agree on the total number of audience seats at each debate site.

(b) In the audience participation debate, the participating audience shall be separated from any nonparticipating audience, and steps shall be taken to ensure that the participating audience is admitted to the debate site without contact with the campaigns, the media, or the nonparticipating audience.

(c) The Commission shall allocate tickets to the two (2) campaigns in such a manner to ensure that supporters of each candidate sit in a block opposite that candidate's stage position and interspersed with tickets distributed by the Commission. For the September 26 (First Presidential), debate, October 2 (Vice Presidential) debate, and October 15 (Third Presidential) debate, the family members of each candidate shall be seated in the front row, diagonally

across from the candidate directly in his or her line of sight while seated or standing at the podium. For the October 7 (Second Presidential) debate, the family members of each candidate shall be seated as mutually agreed by representatives of the campaigns.

(d) Any media seated in the auditorium shall be accommodated only in the last two (2) rows of the auditorium farthest from the stage. Two (2) still photo stands may be positioned near either side of the television camera stands located in the audience. (A media center with all necessary feeds will be otherwise available.)

(e) Tickets will be delivered by the Commission to each candidate's designated representative by 12:00 noon on the day preceding each debate. The Commission will invite from its allotment (two (2) tickets each) an agreed upon list of officeholders such as the U.S. Senate and House Majority and Minority Leaders, the Governor and Lieutenant Governor of the State holding the debate, an appropriate list of other public officials and the President of the University sponsoring the debate. The Commission shall not favor one candidate over the other in the distribution of its allotment of tickets.

11. Dressing Rooms/Holding Rooms

(a) Each candidate shall have a dressing room available of adequate size so as to provide private seclusion for that candidate and adequate space for the staff the candidate desires to have in this area. The two (2) dressing rooms shall be comparable in size and in quality and in proximity and access to the debate stage.

(b) An equal number of other backstage rooms will be available for other staff members of each candidate. Each candidate shall have a minimum of eight (8) such rooms, five (5) of which shall be in the debate facility itself, and three (3) of which shall be located next to the press center. The rooms located next to the media center shall be located so that each campaign has equal proximity and ease of access to the media center. Each of the eight rooms shall be a minimum of 10 feet by 10 feet. All of these rooms shall be furnished at the Commission's expense as deemed necessary by the candidates' representatives. Each candidate's rooms shall be reasonably segregated from those designated for the other candidate and soundproofed. If sufficient space to accommodate the above needs is not available at a particular debate facility, the Commission shall provide trailers or alternative space mutually agreeable to the candidates' representatives at the

Commission's expense. Space that is comparable in terms of size, location, and quality shall be provided to the two campaigns. These rooms shall be made available at least seventy-two (72) hours in advance of the beginning of each debate. Each campaign may, at the Commission's expense, rent one or more additional trailers.

(c) The number of individuals allowed in these rooms or trailers shall be determined solely by each candidate. The Secret Service shall issue "all access" passes to the candidates' representatives as requested.

(d) The Commission shall provide each candidate with a direct television feed from the production truck to two (2) monitors placed in the candidate's dressing room and staff holding rooms as requested by the candidate's representatives. In addition, the Commission shall provide at least one (1) additional functioning TV set for each of the eight (8) rooms.

12. Media

(a) Each candidate will receive not fewer than fifty (50) press passes for the Media Center during the debate and more if mutually agreed upon by the campaigns.

(b) Each candidate will be allowed to have an unlimited number of people in the Media Center upon the conclusion of the debate.

(c) The Commission will be responsible for all media credentialing.

13. Survey Research

The sponsor of the debates agree that it shall not, prior to two days after the Presidential Inauguration of 2009, release publicly or to the media or otherwise make publicly available any survey research (including polls or focus group results or data) concerning the performance of the candidates in the debate or the preferences of the individuals surveyed for either candidate.

14. Complete Agreement

This memorandum of understanding constitutes the entire agreement between the parties concerning the debates in which the campaigns will participate in 2008.

15. Amendments

This Agreement will not be changed or amended except in writing signed by those persons who signed this Agreement their designees.

16. Ratification and Acknowledgement

Agreed and Accepted:

By: _____

Printed Name: _____

Title: _____

Executed on September _____ **, 2008**

Agreed and Accepted:

By: _____

Printed Name: _____

Title: _____

Executed on September _____ **, 2008**

Agreed and Accepted:

The Commission on Presidential Debates

By: _____

TAB I

110047M/LM/NO

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding constitutes an agreement between Obama for America and Romney for President (the "campaigns") regarding the rules that will govern debates in which the campaigns participate in 2012. This agreement shall be binding upon the campaigns.

1. Number, Dates, Time, Locations, Topics

(a) Presidential Debates

<u>Date</u>	<u>Location</u>
Wednesday, October 3	University of Denver Denver, CO
Tuesday, October 16	Hofstra University Hempstead, NY
Monday, October 22	Lynn University Boca Raton, FL

(b) Vice Presidential Debate

<u>Date</u>	<u>Location</u>
Thursday, October 11	Centre College Danville, KY

(c) Each debate shall begin at 9 p.m. Eastern Daylight Time.

(d) The parties agree that they will not (1) issue any challenges for additional debates, (2) appear at any other debate or adversarial forums except as agreed to by the parties, or (3) accept any television or radio air time offers that involve a debate format or otherwise involve the simultaneous appearance of more than one candidate.

(e) The topic of the October 3 (First Presidential) debate shall be domestic policy. The topic of the October 22 (Third Presidential) debate shall be foreign policy. The October 11 (Vice Presidential) debate and the October 16 (Second Presidential) debate shall not be limited by topic

and shall include a balance of questions on topics including foreign policy and national security, on the one hand, and domestic and economic policy on the other.

2. Sponsorship

The two campaigns will participate in four debates sponsored by the Commission on Presidential Debates (the "Commission"). The Campaigns agree that the Commission shall sponsor the debates, subject to its expression of a willingness to employ the provisions of this agreement in conducting these debates. In the event the Commission does not so agree, the two campaigns jointly reserve the right to determine whether an alternate sponsor is preferable. The parties agree that the Commission's Nonpartisan Candidate Selection Criteria for 2012 General Election Debate participation shall apply in determining the candidates to be invited to participate in these debates.

3. Participants

If one or more candidates from campaigns other than the two (2) signatories are invited to participate pursuant to those Selection Criteria, those candidates shall be included in the debates, if those candidates accept the terms of this agreement. Any modifications to this agreement must be agreed upon by each of the signatories to this agreement as well as all other candidates selected to join the debate.

4. Moderator

(a) Each debate will have a single moderator;

(b) The parties have accepted the Commission's recommendations of the below-listed moderators. The Commission shall provide each moderator with a copy of this agreement and shall use its best efforts to ensure that the moderators implement the terms of this agreement.

(i) Jim Lehrer for the First Presidential debate, October 3, 2012 at the University of Denver.

(ii) Candy Crowley for the Second Presidential debate, October 16, 2012 at

Hofstra University.

(iii) Bob Schieffer for the Third Presidential debate, October 22, 2012 at Lynn University.

(iv) Martha Raddatz for the Vice Presidential debate, October 11, 2012 at Centre College.

5. Rules Applicable to All Debates

The following rules shall apply to each of the four debates:

(a) Each debate shall last for ninety (90) minutes, with the time commencing from the start of the moderator's opening to the conclusion of the moderator's closing.

(b) For each debate, there shall be no opening statements. There shall be a 2 minute closing statements in the First debate, a 90 second closing in the Vice President debate, and for the Third Presidential debate, the campaigns will resolve the choice between a 90 second and a 2 minute closing by coin toss. There will be no closing statement in the Second Presidential Town Hall debate. The order of these closing statements shall be determined by coin toss.

(c) No props, notes, charts, diagrams, or other writings or other tangible things may be brought into the debate by any candidate, including portable electronic devices, and prior to the beginning of the debate, the Commission will verify as appropriate that the candidates have complied with this subsection. No candidate may reference or cite any specific individual sitting in a debate audience (other than family members) at any time during a debate. If a candidate references or cites any specific individual(s) in a debate audience, or if a candidate uses a prop, note, or other writing or other tangible thing during a debate, the moderator must interrupt and explain that reference or citation to the specific individual(s) or the use of the prop, note, or other writing or thing violates the debate rules agreed to by that candidate.

(d) Notwithstanding subparagraph 5(c), the candidates may take notes during the debate on the size, color, and type of blank paper each prefers and using the type of pen or pencil that each prefers. The staff of the candidate will place such paper, pens, and pencils on the podium, table, or other structure to be used by the candidate in that debate.

(e) The candidates may not ask each other direct questions during any of the four debates.

(f) The order of questioning shall be determined as follows: The Commission will conduct a coin toss at least seventy-two (72) hours before the First Presidential debate (October 3). At that time, the winner of the coin toss shall have the option of choosing, for the October 3 debate, whether to take the first or second question. At that time, the loser of the coin toss will have the choice of question order for the October 22 (Third Presidential) debate. For the October 16 (Second Presidential-Town Hall) debate, there shall be a separate coin toss, with the winner choosing whether to take the first or second question. The Commission shall set a time at least seventy-two (72) hours before the October 16 (Second Presidential-Town Hall) debate at which the candidates shall make their choices for that debate.

(g) President Obama shall be addressed by the moderator as "Mr. President" or "President Obama". Governor Romney shall be addressed by the moderator as "Governor" or "Governor Romney".

(h) The candidates shall not address each other with proposed pledges.

(i) In each debate, the moderator shall:

(i) Open and close the debate and enforce all time limits. Where a candidate exceeds the permitted time for comment, the moderator shall interrupt and remind both the candidate and the audience of the expiration of the time limit and call upon such candidate to observe the strict time limits that have been agreed upon herein.

(ii) Use his or her best efforts to ensure that the questions are reasonably well

balanced in all debates and within the designated subject matter areas of the October 3 (First Presidential) debate and October 22 (Third Presidential) debate in terms of addressing a wide range of issues of major public interest facing the United States and the world.

(iii) Vary the topics on which he or she questions the candidates and ensure that the topics of the questions are fairly apportioned between the candidates, except that in the First Debate, the moderator shall apportion the questions within the broad topic areas announced by the Commission for that debate.

(iv) Use best efforts to ensure that the two candidates speak for approximately equal amounts of time during the course of each debate and within each segment of each debate.

(v) Use any reasonable method to ensure that the agreed-upon format is followed by the candidates and the audience.

(vi) Alternate between the candidates the one responding first to questions.

(j) At no debate shall the moderator ask the candidates for a "show of hands" or similar calls for response.

6. Additional Rules Applicable to the October 3 and October 22 Debates

For the October 3 (First Presidential) debate, the candidates will appear at podiums. For the October 22 (Third Presidential) debate, the candidates shall be seated jointly at a table, in a style similar to previous presidential debates employing that format. The October 3 (First Presidential) debate and October 22 (Third Presidential) debate shall be governed by the rules set forth in section 5 and the following additional rules:

(a) There shall be no audience participation in the October 3 (First Presidential) debate and October 22 (Third Presidential) debate. Except as provided by the agreed upon rules of

the October 16 town hall debate, members of the debate audience will be instructed by the moderator before the debate goes on the air and by the moderator after the debate goes on the air not to applaud, speak, or otherwise participate in the debate by any means other than by silent observation, as further provided and enforced under section 9(a)(viii). The moderator shall direct the first question to the candidate determined by the procedure set forth in subparagraph 5(f) of section 5.

(b) The October 3 First Presidential debate and the October 22 Third Presidential debate shall be broken into six, 15-minute segments. Each segment will begin with the moderator introducing a topic and giving each candidate 2 minutes to comment on the topic. After these initial answers, the moderator will facilitate an open discussion of the topic for the remaining approximately 8 minutes and 45 seconds, ensuring that both candidates receive an equal amount of time to comment. The candidates will reverse the order of response to the next and subsequent questions.

(c) At no time during the October 3 First Presidential debate shall either candidate move from his designated area behind his respective podium. At no time during the October 22 Third Presidential debate shall either candidate move from his designated area seated behind the table.

7. Additional Rules Applicable to the October 16 Debate

The October 16 (Second Presidential) debate will be conducted in an audience participation ("Town Hall") format. This debate shall be governed by the rules set forth in section 5 (as applicable), and the staging of the debate, including the audience size, will be determined by the Commissioner producer in consultation with, and subject in its details to, the agreement of both candidates, to achieve consistency with the traditional Town Hall format. In addition, there shall be the following additional rules:

(ii) As set forth in section 7(e), questioners shall not be allowed to make statements, speeches, or comments. They must ask their question as originally submitted and selected by the moderator and make no other comments.

(iv) The moderator will not ask follow-up questions or comment on either the questions asked by the audience or the answers of the candidates during the debate or otherwise intervene in the debate except to acknowledge the questioners from the audience or enforce the time limits, and invite candidate comments during the 2 minute response period.

(v) The two campaigns shall agree upon a method for selection of the audience for the town hall debate pursuant to subparagraph (f) below.

(d) The audience members shall not ask follow-up questions or otherwise participate in the extended discussion, and the audience member's microphone shall be turned off after he or she completes asking the questions.

(c) Prior to the start of the debate, audience members will be asked to submit their questions in writing to the moderator. No third party, including the Commission and the campaigns, shall be permitted to see the questions. The moderator shall approve all questions to be posed by the audience members to the candidates. The moderator shall ensure that the audience members pose to the candidates a balance of questions on foreign policy and national security, on the one hand, and domestic and economic policy on the other. The moderator will further review the questions and eliminate any questions that the moderator deems inappropriate. At least seven (7) days before the October 16 (Second Presidential-Town Hall) debate, the moderator shall develop, and describe to the campaigns, a method for selecting questions at random while assuring that questions are reasonably well balanced in terms of addressing a wide range of issues of major public interest facing the United States and the world. Each question selected will be asked by the audience member

submitting that question. If any audience member poses a question or makes a statement that is in any material way different than the question that the audience member earlier submitted to the moderator for review, the moderator will cut-off the questioner and advise the audience that such non-reviewed questions are not permitted. Moreover, the Commission shall take appropriate steps to cut-off the microphone of any such audience member who attempts to pose any question or statement different than that previously posed to the moderator for review. The moderator will inform the audience of this provision prior to the start of the debate.

(f) Subject to the consultation and agreement procedure affecting staging, as described in this section, the debate will take place before a live participating audience of persons who shall be seated and who describe themselves as likely voters. These participants will be selected by the Gallup Organization ("Gallup"), using a methodology approved in writing by the campaigns. Gallup shall have responsibility for selecting the nationally demographically representative group of voters. At least fourteen (14) days prior to October 16 (Second Presidential-Town Hall) debate, Gallup shall provide a comprehensive briefing on the selection methodology to the campaigns, and both campaigns shall approve the methodology. Either campaign may raise objections on the methodology to Gallup and to the Commission within twenty-four (24) hours of the briefing, and Gallup shall revise the methodology accordingly.

(g) Participants selected shall not be contacted directly or indirectly by the campaigns before the debate. The Commission shall not contact the participants before the debate other than for logistical purposes.

8. Additional Rules Applicable to October 11 (Vice Presidential) Debate

For the debate between the two candidates for Vice-President, the candidates will be seated at a table following the same basic rules and staging provisions (except as otherwise noted here) for the October 22 (Third Presidential) debate. There shall be no audience participation of any kind.

The stage position for each candidate shall be determined by a flip of the coin, witnessed by the campaigns' representatives, no less than 72 hours before the start of the debate.

(a) The moderator shall ask questions of each candidate in alternating order with the recipient of the first question determined by a flip of the coin, witnessed by the campaigns' representatives, no less than 72 hours before the start of the debate. When asked a question, the first candidate will have two minutes in which to respond, the second candidate will have two minutes to comment on the response, and then the moderator will lead a 4 minute 15 second minute discussion with the time to be evenly divided between the candidates.

(b) There will be no opening statements. Each candidate shall have 90 seconds in which to make a closing statement with the order of those statements determined by a flip of the coin, witnessed by the campaigns' representatives, no less than 72 hours before the start of the debate. The moderator shall take steps to ensure that each candidate has the full two minutes provided in this paragraph, and the Commission shall take steps to ensure that the closing statements are included in the nationwide broadcast, notwithstanding any other provision in this agreement.

(c) If there are any discrepancies between this paragraph and any other provision of this agreement, the provisions of this paragraph shall govern. Any issues not anticipated by this paragraph or the agreement shall be resolved at the debate site by the campaigns' representatives and, failing a resolution, by a coin flip.

(d) Each campaign will advise the moderator of the choice of address that it would prefer.

9. Staging

(a) The following rules apply to each of the four debates:

(i) All staging arrangements for the debates not specifically addressed in this agreement shall be jointly addressed and agreed to by representatives of the two

campaigns. In this regard, the Commission staff-- including the broadcast producer -
- shall meet at least once daily and simultaneously with a representative of each
campaign, and the Commission shall provide reasonable daily access to the stage and
debate site, on an equal basis but not simultaneously, for each campaign.

(ii) The Commission will conduct a coin toss at least seventy-two hours before
the October 3 (First Presidential) debate. At that time, the winner of the coin toss
shall have the option of choosing stage position for the October 3 debate; the loser
of the coin toss will have first-choice of stage position for the October 22 (Third
Presidential) debate. The loser of the coin toss or his representative shall
communicate his stage position choice by email to the Commission and to the other
campaign at least seventy-two (72) hours before the October 22 (Third Presidential)
debate. The stage position for the October 16 (Second Presidential-Town Hall)
debate will be determined by a coin toss to take place at least seventy-two (72) hours
before the debate. The stage position for the October 11 (Vice Presidential) debate
will be determined by a separate coin toss to take place at least seventy-two (72)
hours before that debate.

(iii) For the October 3 (First Presidential) debate, October 11 (Vice Presidential),
October 16 (Second Presidential-Town Hall) debate, and October 22 (Third
Presidential) debate, the candidates shall enter the stage simultaneously, from
opposite ends of the stage, upon a verbal cue by the moderator after the program
goes on the air, proceed to center stage, shake hands, and proceed directly to their
positions.

(iv) Except as provided in subparagraph (d) (viii) of this paragraph 9, TV cameras
will be locked into place during all debates. They may, however, tilt or rotate as

needed to frame the candidate or moderator.

(v) Except as provided in subparagraph 9(d) (viii), TV coverage during the question and answer period shall be limited to shots of the candidates or moderator, and in no case shall any television shots be taken of any member of the audience (including candidates' family members) from the time the first question is asked until the conclusion of the closing statements, if any. When a candidate is speaking, either in answering a question or making his closing statement, TV coverage will be limited to the best of the Commission's ability to the candidate speaking. To the best of the Commission's abilities, there will be no TV cut-aways to any candidate who is not responding to a question while another candidate is answering a question or to a candidate who is not giving a closing statement while another candidate is doing so.

(vi) The camera located at the rear of the stage shall be used only to take shots of the moderator and will not show the notes taken by the candidates.

(vii) For each debate, each candidate shall have camera-mounted, timing lights corresponding to the timing system described in section 9(b) (vi) below positioned in his or her line of sight. The candidates will have a countdown clock for all the 2-minute responses and any closing statements.

(viii) All members of the debate audience will be instructed by the moderator before the debate goes on the air and by the moderator after the debate goes on the air not to applaud, speak, or otherwise participate in the debate by any means other than by silent observation, except as provided by the agreed upon rules of the October 16 town hall debate. The moderator shall also state that, should an audience member fail to comply with this requirement, he or she will be subject to removal from the audience and from the facility. In the event of and in each instance

whereby an audience member(s) violates this requirement, the moderator shall restate the instruction for the entire audience and shall also use his or her best efforts to enforce this provision, as appropriate, against the specific audience members failing to comply with the instructions pursuant to this subparagraph.

(ix) The Commission shall use best efforts to maintain an appropriate temperature as agreed to by the campaigns.

(x) Each candidate shall be permitted to have a complete, private production and technical briefing and walk-through ("Briefing") at the location of the debate on the day of the debate. The order of the Briefing shall be determined by agreement or, failing candidate agreement, a coin flip. Each candidate will have a maximum of one (1) hour for this Briefing. Production lock-down will not occur for any candidate unless that candidate has had his or her Briefing. There will be no filming, taping, photography, or recording of any kind (except by that candidate's personal photographer) allowed during the candidates' Briefing. No media, other than as stated herein, will be allowed into the auditorium where the debate will take place during a candidate's Briefing. All persons, including but not limited to the media, other candidates and their representatives, and the employees or agents of the Commission, other than those necessary to conduct the Briefing, shall vacate the debate site while a candidate has his or her Briefing. The Commission will provide to each candidate's representatives a written statement and plan which describes the measures to be taken by the Commission to ensure the complete privacy of all briefings.

(xi) The color and style of the backdrop will be recommended by the Commission and agreed to by representatives of the campaigns. The Commission

shall make its recommendation known to the campaigns at least seventy-two (72) hours before each debate. The backdrops behind each candidate shall be identical.

(xii) The set will be completed and lit no later than 3 p.m. at the debate site on the day before the debate will occur.

(xiii) Each candidate may use his or her own makeup person, and adequate facilities shall be provided by the Commission at the debate site for makeup.

(xiv) In addition to Secret Service personnel and other provision for official support as required by law and standard protocols for the President, each candidate will be permitted to have one (2) pre-designated staff member in the wings or in the immediate backstage area during the debate at a location to be mutually agreed upon by representatives of the campaigns at each site. All other staff must vacate the wings or immediate backstage areas no later than five (5) minutes before the debate commences. A PL phone line will be provided between each candidate's staff work area and the broadcast producer.

(xv) Each candidate shall be allowed to have one (1) professional still photographer present on the stage before the debate begins and in the wings during the debate as desired and on the stage immediately upon the conclusion of the debate. No photos shall be taken from the wings by these photographers during the debate. Photos taken by these photographers may be distributed to the press as determined by each candidate. In addition, the press pool accompanying each candidate shall be included in a pool to be formed by the Commission for pre- and post-debate photography from the buffer zone.

(b) In addition to the rules in subparagraph (a), the following rules apply to the October 3 (First Presidential) debate:

the moderator when there are thirty (30) seconds remaining, fifteen (15) seconds remaining, and five (5) seconds remaining, respectively for the two (2) minute and other timed answers. Pursuant to Section 5(j) (i), the moderators shall enforce the strict time limits described in this agreement. Each candidate will have a countdown clock which will show the seconds left in any two minute answer or closing statement.

(c) In addition to the rules in subparagraph (a), the following rules apply to the October 16 (Second Presidential-Town Hall) debate:

(i) The candidates shall be seated on director chairs (with backs) before the audience, which shall be seated in approximately a horseshoe arrangement as symmetrically as possible around the candidates. Consistent with the terms of Section 7, the precise staging arrangements will be determined by the Commission's producer subject to the approval of representatives of both campaigns.

(ii) The chairs shall be identical and have backs and a footrest and shall be approved by the candidates' representatives.

(iii) Each candidate shall have a place to put a glass of water and paper and pens or pencils for taking notes (in accordance with section (d)) of sufficient height to allow note taking while sitting on the chair, and which shall be designed by the Commission, subject to the approval of representatives of both campaigns.

(iv) Each candidate may move about in a pre-designated area, as proposed by the Commission and approved by each campaign, and may not leave that area while the debate is underway. The pre-designated areas of the candidates may not overlap.

(v) Each candidate shall use a wireless hand held microphone (with appropriate back-up) to allow him to move about and to face different directions while responding to

questions from the audience.

(vi) At least ten days before each debate, the Commission shall submit for approval by the campaigns a diagram for camera placement, set design, and room configuration to include the audience seating breakdown.

(vii) At least seven (7) days before the October 16 (Second Presidential-Town Hall) debate, the Commission shall recommend a system of time cues subject to approval by both campaigns and consistent with the cues described in section 9(b)(vi).

(viii) Notwithstanding sections 9 (a)(iv) and (v), a roving camera may be used for shots of an audience member only during the time that the audience member is asking a question.

(ix) Prior to the start of the debate, neither the moderator nor any other person shall engage in a "warm up" session with the audience by engaging in a question or answer session or by delivering preliminary remarks. The moderator shall inform the audience of the rules of the debate, including the instruction that any audience member chosen to ask a question must ask the question he or she submitted, as described in Sections 7 (a) and (e).

(d) In addition to the rules in subparagraph (a), the following rules apply to the October 11 (Vice-Presidential) debate and the October 22 (Third Presidential) debate:

(i) The candidates shall be seated at a table similar to the design used in prior Presidential and Vice Presidential debates with the moderator facing the candidates with his back to the audience and the candidates appearing on either side of the moderator. The precise design of the table and staging arrangements will be determined by the Commission subject to the approval of representatives of both campaigns. The Commission will submit a design for the table to the campaigns as soon as practicable but in no event later than 10 days before the Vice Presidential debate. The same table and design will be used for the October 22 Third

Presidential Debate.

- (ii) The chairs shall be swivel chairs that can be locked in place, shall be identical and shall be approved by the candidates' representatives.
- (iii) Each candidate shall have a place to put a glass of water and paper and pens or pencils for taking notes (in accordance with section (d)).
- (iv) Each candidate and the moderator shall have a wireless lapel microphone, and an identical microphone to be used as a backup.
- (v) At least ten days before both debates, the Commission shall submit for approval by the campaigns a diagram for camera placement, set design, and room configuration to include the audience seating breakdown.
- (vi) At least seven (7) days before the October 11 (Vice Presidential debate) and the October 22 (Third Presidential) debate, the Commission shall recommend a system of time cues subject to approval by both campaigns and consistent with the cues described in section 9(b)(vi).
- (vii) The candidates shall remain seated throughout these two debates.

10. Ticket Distribution and Seating Arrangements

- (a) The Commission shall be responsible for printing and ensuring security of all tickets to all debates. Each campaign shall be entitled to receive directly from the Commission one-third of the available tickets (excluding those allocated to the participating audience in the October 16 debate), with the remaining one-third going to the Commission.
- (b) In the October 16 Town Hall debate, the participating audience shall be separated from any nonparticipating audience, and steps shall be taken to ensure that the participating audience is admitted to the debate site without contact with the campaigns, the media, or the nonparticipating audience.

this area. The two (2) dressing rooms shall be comparable in size and in quality and in proximity and access to the debate stage.

(b) An equal number of other backstage rooms will be available for other staff members of each candidate. Any rooms located next to the media center shall be located so that each campaign has equal proximity and ease of access to the media center. Each candidate's rooms shall be reasonably segregated from those designated for the other candidate. If sufficient space to accommodate the above needs is not available at a particular debate facility, the Commission shall provide trailers or alternative space mutually agreeable to the candidates' representatives at the Commission's expense. Space that is comparable in terms of size, location, and quality shall be provided to the two campaigns. These rooms shall be made available at least seventy-two (72) hours in advance of the beginning of each debate.

(c) The number of individuals allowed in these rooms or trailers shall be determined solely by each candidate in conjunction with the Secret Service. .

(d) The Commission shall insure that each campaign is provided with a television feeds that are on-air (as opposed to only the in-house feed from the production truck). The campaigns agree that these televisions and hook-ups are to be provided at their own expense.

12. Media

(a) Each candidate will receive not fewer than eighty (80) press passes for the Media Center during the debate and more if mutually agreed upon by the campaigns.

(b) The Commission will be responsible for all media credentialing.

13. Survey Research

The sponsor of the debates agrees that it shall not, prior to two days after the Presidential Inauguration of 2013, release publicly or to the media or otherwise make publicly available any survey research (including polls or focus group results or data) concerning the performance of the

candidates in the debate or the preferences of the individuals surveyed for either candidate.

14. Complete Agreement

This memorandum of understanding constitutes the entire agreement between the parties concerning the debates in which the campaigns will participate in 2012.

15. Amendments

(d) This Agreement will not be changed or amended except as agreed and confirmed in writing by those persons who signed this Agreement their designees.

16. Ratification and Acknowledgement

Agreed and Accepted:

By:

Printed Name:

Title:

Executed on October

2012

Agreed and Accepted:

By:

Printed Name:

Title:

Executed on October

2012

EXHIBIT 2

UNCLASSIFIED

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

**The Commission on Presidential Debates,
et al.**

MUR 6869

**Declaration of Frank M. Newport in
Support of the Commission on Presidential
Debates' Opposition to Level the Playing
Field and Peter Ackerman's Complaint.**

I, Frank M. Newport, give this declaration based on my personal knowledge.

1. I am Gallup's Editor-in-Chief. I first joined the Gallup Organization in 1988, and have served as the Editor-in-Chief since 1990. As Editor-in-Chief, I am in charge of Gallup's domestic public opinion polling.

2. In 2010-2011, I served as the elected president of the American Association for Public Opinion Research, the nation's largest professional society of pollsters. I also serve as the Vice Chair of the Board of Directors of the Roper Center for Public Opinion Research, and as a Trustee of the National Council on Public Polls.

3. Before joining Gallup, I spent nine years as a partner at Tarrance, Hill, Newport, and Ryan, a Houston-based research firm, where I conducted public opinion and market research for a variety of businesses and organizations across the country. In that role, I was involved in the implementation and analysis of hundreds of market research and public opinion polls.

Educational Background and Qualifications

4. I have a Ph.D. in Sociology from the University of Michigan, and have taught sociology and survey research methods at the University of Missouri-St. Louis. I have also appeared as a guest lecturer at colleges and universities around the country. Currently, I am featured on the weekly broadcast "What Are We Thinking" produced by NPR's WHYY Radio in

Philadelphia, and I am a frequent guest on television and other radio shows discussing public opinion, polling and the elections.

5. I have authored numerous articles on public opinion polling that have been published in peer reviewed academic journals and other trusted publications, including the American Sociological Review, the New York Times, the American Journalism Quarterly, the Journal of Political and Medical Sociology, Social Forces, Public Opinion Quarterly, and Public Perspectives. I am the author of the book *Polling Matters*, published by Wiley in 2004, the chapter "Polling" in the Encyclopedia of International Media and Communications, the co-editor of *Winning the White House 2008* (with Alec M. Gallup) published by Facts on File, and the editor of *The Gallup Poll* series, published annually by Rowman and Littlefield.

6. I have over 30 years of experience in conducting public opinion polling and assessing the methodologies used by public opinion pollsters, including their strengths and weaknesses.

Work With CPD

7. I have been retained as an independent advisor to the Commission on Presidential Debates ("CPD") in each presidential election cycle starting in 2000. In that capacity, I have advised CPD in connection with its application of its published nonpartisan candidate selection criteria. CPD's criteria include that invited candidates must have a level of support of at least fifteen percent (15%) of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination.

8. In my role as CPD's advisor, I have in each election cycle recommended to CPD which five national public opinion polls, in my professional judgment, were most suitable to be

relied upon. In making my recommendations, I principally considered the quality of the methodology employed, the reputation of the polling organizations and the frequency of the polling conducted. I make those recommendations based solely upon my professional judgment and without any partisan purpose or pre-determined result in mind. CPD has always adopted my recommendations.

9. The specific polls CPD has relied upon in each election cycle, based on my recommendations, are as follows:

10. 2000: ABC News/The Washington Post, NBC News/The Wall Street Journal, CBS News/The New York Times, Fox News/Opinion Dynamic, CNN/USA Today/Gallup

11. 2004: ABC News/The Washington Post, NBC News/The Wall Street Journal, CBS News/The New York Times, Fox News/Opinion Dynamic, CNN/USA Today/Gallup

12. 2008: ABC News/The Washington Post, NBC News/The Wall Street Journal, CBS News/The New York Times, Fox News/Opinion Dynamic, USA Today/Gallup

13. 2012: ABC News/The Washington Post, NBC News/The Wall Street Journal, CBS News/The New York Times, Fox News, Gallup

14. I am familiar with the polling methods employed by all of the polling organizations upon whose polls CPD has relied since 2000. Based on my experience and professional judgment, it was, and remains, my professional opinion that these organizations' polls would be conducted in a responsible and professional manner that meets the industry standards and reflects the then-current advances in polling methodology.

15. In each election cycle since 2000, I have also assisted CPD in gathering the polling data from the selected polling organizations and applying that data to the fifteen percent

threshold. In each election cycle in which I have been involved, CPD has faithfully applied its announced criteria to the polling data.

Public Opinion Polling is the Most Accurate Way to Measure Candidate Support Before an Election

16. Public polling is by far the best method of measuring a candidate's support among the electorate prior to Election Day. Polling involves a scientific process through which polling experts seek to determine, mathematically, the best estimate of the public sentiment on a particular topic at a specific point in time. The polling conducted by the organizations whose surveys CPD relies upon has utilized probability based random sampling methodologies, which allow the results of a randomly-selected sample to be generalized to the population from which those samples are drawn, within margin of error limitations. Each of these organizations has utilized current science-based methodological techniques, which involve a number of stages of sampling, weighting and analyzing before results are released and generalized to the underlying population.

17. The science of public opinion polling is constantly evolving as the methodology continues to improve. In recent years, as one example, research organizations using a probability-based random digit dial technique have increasingly included interviews conducted via cell phones as well as by the traditional landlines. Sampling weighting in recent years has evolved significantly, and now in many instances includes weights based on the population density of the region in which individual respondents live, as well as weights based on evolving Census Bureau techniques of classifying individuals by race and ethnicity. These changes are part of ongoing refinements intended to increase the accuracy of the population estimates calculated from the sample actually surveyed.

Public Opinion Polls Used by CPD are Reliable, Accurate, and are Designed to Minimize Errors

18. I have reviewed Complainants' submissions and data relating to the accuracy of public opinion polls. None of the information presented by Complainants casts doubt on the reliability of the public opinion polls CPD has relied upon over the years.

19. Complainants have cited mid-term election results in an effort to discredit the polls upon which CPD relies in applying its candidate selection criteria, and to support their argument that public opinion polling is particularly error-prone in three-way races. I disagree. First, presidential election polling is inherently more reliable than is polling in low turn-out elections, like the mid-terms relied upon by Complainants. State polls in low turnout mid-term elections are generally more subject to sampling and non-sampling errors than the national polls which are used by CPD in presidential elections, making state poll results less relevant to the CPD standards. A presidential race involves a larger portion of the electorate, engages more voters nationwide, and presents fewer obstacles in identifying likely voters.

20. Second, it is always the case that pre-election polls will not precisely duplicate the actual voting results on Election Day. A pre-election poll is designed to measure the true level of public support at the time the poll is administered, not on Election Day.

21. None of Complainants' arguments or supplemental data regarding the mid-term election results support the notion that polls in three-way races will disproportionately misrepresent any candidate's public support at the time the poll is administered. There is nothing about support for a significant third party-candidacy that makes it more difficult to measure. I know of no instance in the modern era of polling in which major polls prior to a presidential election failed to include and measure support for a third party candidate who in fact received a significant percentage of the national vote on Election Day. Polls are estimates and imperfect

predictors of future events, but there is no doubt that properly conducted polls remain the best measure of public support for a candidate—and the best assessment of the principal rivals for the Presidency—at the time the polls are conducted.

22. The reports attached to the Complaint also make reference to sampling and non-sampling errors; but both types of errors and their effect on a poll's accuracy are often misunderstood. Sampling error is generally conceived of as representing statistical issues in the relationship of the specific individuals selected to be interviewed in a sample, and the individuals in the population from which the sample was drawn. The margin of sampling error reported with poll results indicates that, due to a variety of random factors, the reported estimate may vary by a certain number of percentage points from the actual state of public opinion on that day. It does not, however, mean that a result anywhere within the margin of error is just as likely as the reported estimate. Rather, the reported result is the polling organization's best objective estimate of where public opinion stands at that point in time.

23. Non-sampling error in public opinion polls refers to issues relating to the process of obtaining the specific information of interest from the survey respondent. Such errors may be caused by several different factors, including interviewer effects, the effect of specific question wording and the context in which the question appears during the survey process, attributes of respondents, and the specific mode of interviewing being utilized. But public opinion polling organizations take a number of industry standard and validated steps to control for and minimize non-sampling errors, including the utilization of identical question wording and survey context from survey to survey over time for key questions, the training and monitoring of interviewers, and the process of validating survey procedures over time to reduce specific categories of non-sampling error.

24. CPD's approach—to select and average the results of five polls that are well-established, long-time, national, published, cited widely and directed by experienced and capable research professionals—minimizes the effect of both sampling and non-sampling errors and is a sound approach to identifying reliably those candidates who have achieved the requisite level of national support, in my professional judgment.

The Inclusion of Third-Party Candidates in Public Opinion Polls is Properly Left to the Discretion of the Polling Organizations

25. Well-established pollsters with years of experience in political polling, who conduct polls at a specific time during the course of a presidential election, will inevitably include and measure the support of presidential candidates whose support level in the underlying population would reach the 15% level or higher at the time of the poll. The precise wording of the election ballot question asked in each poll is an independent decision made by the professionals (including survey scientists, editors and producers) at each of the five polling organizations completely independent of CPD. The final decisions on the candidate names to be explicitly included in the ballot represent the professional judgment of those running the polls at each organization, and these professionals all, based on my experience, take into account the relevant and available empirical data.

26. Given that there are many candidates who run for president each year, it is neither feasible nor appropriate to include every candidate's name in a public opinion poll. Polling professionals must use their expert judgment to determine which candidate names are to be included in a survey on the basis of evidence reflecting interest in, and strength of, the campaign of all potential candidates. Based on my 33 years of experience assessing and conducting polls, it is extraordinarily unlikely that a poll would fail to identify and include among the candidates listed in polling questions a candidate whose level of support is anywhere near 15 percent of the

national electorate. Polling results from the recent mid-term elections cited by the Complainants shed light on this point. I have not identified a single reputable poll in these Senate and gubernatorial elections that failed to include a candidate who subsequently received more than even 10 percent of the vote on Election Day.

27. The polling organizations relied upon by CPD over the years included third party candidates in their polls when the professionals running the polls deemed it appropriate to do so, based on those professionals' assessment of a wide range of evidence available to them. Furthermore, polling organizations allow respondents to volunteer the name of any candidate whom they support and that response is recorded. Some surveys also ask open-ended questions which act as a fail-safe to identify any additional candidates whose support appears to be building among the electorate, but was not significant enough to be included in traditional surveys.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of December, 2014.



Frank M. Newport, Ph.D.

EXHIBIT 3

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Commission on Presidential Debates)

Clinton/Gore '96 General Committee,)
Inc., and Joan C. Pollitt, as Treasurer)

MURs 4451 and 4473

Dole/Kemp '96, Inc., and)
Robert E. Lighthizer, as Treasurer)

DNC Services Corporation/Democratic)
National Committee and Carol Pensky,)
as Treasurer)

Republican National Committee and)
Alec Poitevin, as Treasurer)

STATEMENT OF REASONS

Chairman Joan Aikens
Vice Chairman Scott E. Thomas
Commissioner Lee Ann Elliott
Commissioner Danny Lee McDonald
Commissioner John Warren McGarry

1 INTRODUCTION

On February 24, 1998, the Commission found no reason to believe that the Commission on Presidential Debates ("CPD") violated the law by sponsoring the 1996 presidential debates or by failing to register and report as a political committee. The Commission also found no reason to believe that Clinton/Gore '96 General Committee, Inc., Dole/Kemp '96, and their treasurers (collectively, the "Committees"), violated the law by accepting and failing to report any contributions from CPD. The Commission

closed the file with respect to all of the respondents. The reasons for the Commission's findings are set forth in this statement.

II. SELECTION OF PARTICIPANTS FOR CANDIDATE DEBATES

A. Legal Framework

Under the Federal Election Campaign Act of 1971, as amended ("FECA"), corporations are prohibited from making contributions¹ or expenditures² in connection with federal elections. 2 U.S.C. § 441b(a); see also 11 C.F.R. § 114.2(b).³ The Commission has promulgated a regulation that defines the term "contribution" to include: "A gift, subscription, loan ... advance or deposit of money or anything of value made... for the purpose of influencing any election for Federal office." 11 C.F.R. § 100.7(a)(1). See also 11 C.F.R. § 114.1(a). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The regulatory definition of contribution also provides: "[u]nless specifically exempted under 11 C.F.R. § 100.7(b), the provision of any goods or services without charge ... is a contribution." *Id.*

Section 100.7(b) of the Commission's regulations specifically exempts expenditures made for the purpose of staging debates from the definition of contribution. 11 C.F.R. § 100.7(b)(2)(i). This exemption requires that such debates meet the requirements of 11 C.F.R. § 110.13,⁴ which establishes parameters within which staging organizations must conduct such debates. The parameters address: (1) the types of organizations that may stage such debates, (2) the structure of debates, and (3) the criteria that debate staging organizations may use to select debate participants. With respect to participant selection criteria, 11 C.F.R. § 110.13(c) provides, in relevant part:

¹ FECA defines contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."

2 U.S.C. § 431(8)(A)(i); see also 2 U.S.C. § 441b(b)(2).

² FECA defines expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person, for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(ii); see also 2 U.S.C. § 441b(b)(3).

³ The presidential candidates of the major parties who accept public funds cannot accept contributions from any source, except in limited circumstances that are not raised herein. 26 U.S.C. § 9003(b)(2); see also 11 C.F.R. § 9012.2(a).

⁴ The exemption also requires that such debates meet the requirements of 11 C.F.R. § 114.4, which permits certain nonprofit corporations to stage candidate debates and other corporations and labor organizations to donate funds to organizations that are staging such debates. 11 C.F.R. §§ 114.4(f)(1) and (3). This section also requires the debates to be staged in accordance with the standards in 11 C.F.R. § 110.13. *Id.*

Criteria for candidate selection For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

11 C.F.R. § 110.13. When promulgating this regulation, the Commission explained its purpose and operation as follows:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established objective criteria to avoid the real or apparent potential for a *quid pro quo*, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . .

. . . Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes there are too many candidates to conduct a meaningful debate.

Under the new rules, nomination by a particular political party, such as a major party, may not be the sole criterion used to bar a candidate from participating in a general election debate. But, in situations where, for example, candidates must satisfy three of five objective criteria, nomination by a major party may be one of the criteria. This is a change from the Explanation and Justification for the previous rules, which had expressly allowed staging organizations to restrict general election debates to major party candidates. See Explanation and Justification, 44 FR 76735 (December 27, 1979). In contrast, the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating simply because they have not been nominated by a major party.

Thus, if an appropriate corporation staged a debate among candidates for federal office and that debate was staged in accordance with all of the requirements of 11 C.F.R. § 110.13, then the costs incurred by the sponsoring corporation would be exempt from the definition of contribution pursuant to the operation of 11 C.F.R. § 100.7(b)(21). See also 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(1). Similarly, other corporations legally could provide funds to the sponsoring corporation to defray expenses incurred in staging the debate pursuant to the operation of 11 C.F.R. §§ 114.1(a)(2)(x) and 114.4(f)(3). On the other hand, if a corporation staged a debate that was not in accordance with 11 C.F.R. § 110.13, then staging the debate would not be an activity "specifically permitted" by 11 C.F.R. § 100.7(b), but instead would constitute a contribution to any participating candidate under the Commission's regulations. See 11 C.F.R. § 100.7(a)(1)(iii)(A) (noting "unless specifically exempted" anything of value provided to the candidate constitutes a contribution). The participating candidates would be required to report receipt of the in-kind contribution as both a contribution and an expenditure pursuant to 11 C.F.R. § 104.13(a)(1) and (2). See 2 U.S.C. § 434(b)(2)(C) and (4).

B Commission on Presidential Debates Selection Criteria

CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation designed to organize, manage, produce, publicize and support debates for the candidates for President of the United States. Prior to the 1992 campaign, CPD sponsored six debates, five between candidates for President, and one between candidates for Vice President. In the 1996 campaign, CPD sponsored two Presidential debates and one Vice Presidential debate. Only the candidates of the Democratic and Republican parties were invited to participate in the 1996 debates. CPD produced written candidate selection criteria for the 1996 general election debate participation. Relying on these criteria and the recommendation of an advisory committee consisting of a broad array of independent professionals and experts, the CPD determined that only the Democratic and Republican candidates had a "realistic chance of winning" the 1996 election.

The introduction to the candidate selection criteria explains, in pertinent part:

In light of the large number of declared candidates in any given presidential election, [CPD] has determined that its voter education goal is best achieved by limiting debate participation to the next President and his or her principal rival(s).

A Democratic or Republican nominee has been elected to the Presidency for more than a century. Such historical prominence and sustained voter interest warrants the extension of an invitation

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to the respective nominees of the two major parties to participate in [CPD's] 1996 debates

In order to further the educational purposes of its debates, [CPD] has developed nonpartisan criteria upon which it will base its decisions regarding selection of nonmajor party candidates to participate in its 1996 debates. The purpose of the criteria is to identify nonmajor party candidates, if any, who have a realistic (i.e., more than theoretical) chance of being elected the next President of the United States and who properly are considered to be among the principal rivals for the Presidency.

The criteria contemplate no quantitative threshold that triggers automatic inclusion in a [CPD]-sponsored debate. Rather, [CPD] will employ a multifaceted analysis of potential electoral success, including a review of (1) evidence of national organization, (2) signs of national newsworthiness and competitiveness, and (3) indicators of national enthusiasm or concern, to determine whether a candidate has a sufficient chance of election to warrant inclusion in one or more of its debates

February 6, 1998 General Counsel's Report ("G.C. Report") at Attachment 4, at 57.

Thus, CPD identified its objective of determining which candidates have a realistic chance of being elected the next President, and it specified three primary criteria for determining which "nonmajor" party candidates to invite to participate in its debates. CPD further enumerated specific factors under each of the three primary criteria that it would consider in reaching its conclusion.

For its first criterion, "evidence of national organization," CPD explained that this criterion "encompasses objective considerations pertaining to [Constitutional] eligibility requirements . . . [and] also encompasses more subjective indicators of a national campaign with a more than theoretical prospect of electoral success." *Id.* The factors to be considered include:

- a. Satisfaction of the eligibility requirements for Article II, Section I of the Constitution of the United States.
- b. Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority.

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- c. Organization in a majority of congressional districts in those states.
- d. Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsement by federal and state officeholders.

Id

CPD's second criterion, "signs of national newsworthiness and competitiveness," focuses "both on the news coverage afforded the candidacy over time and the opinions of electoral experts, media and non-media, regarding the newsworthiness and competitiveness of the candidacy at the time [CPD] makes its invitation decisions." *Id*. Five factors are listed as examples of "signs of national newsworthiness and competitiveness":

- a. The professional opinions of the Washington bureau chiefs of major newspapers, news magazines, and broadcast networks.
- b. The opinions of a comparable group of professional campaign managers and pollsters not then employed by the candidates under consideration.
- c. The opinions of representative political scientists specializing in electoral politics at major universities and research centers.
- d. Column inches on newspaper front pages and exposure on network telecasts in comparison with the major party candidates.
- e. Published views of prominent political commentators.

Id at 58.

Finally, CPD's third selection criterion states that the factors to be considered as "indicators of national public enthusiasm" are intended to assess public support for a candidate, which bears directly on the candidate's prospects for electoral success. The listed factors include:

- a. The findings of significant public opinion polls conducted by national polling and news organizations.

b. Reported attendance at meetings and rallies across the country (locations as well as numbers) in comparison with the two major party candidates.

Id

(c) Discussion

After a thorough and careful examination of the factual record, the undersigned commissioners unanimously concluded the Commission on Presidential Debates used "pre-established objective criteria" to determine who may participate in the 1996 Presidential and Vice-Presidential debates. 11 C.F.R. §110.13.⁵ As a result, CPD did not make, and the candidate committees did not receive, a corporate contribution.

The CPD was set up and structured so that the individuals who made the ultimate decision on eligibility for the 1996 debates relied upon the independent, professional judgment of a broad array of experts. The CPD used multifaceted selection criteria that included, (1) evidence of a national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. We studied these criteria carefully and concluded that they are objective. Moreover, we could find no indication or evidence in the factual record to conclude that the criteria "were designed to result in the selection of certain pre-chosen participants." Explanation and Justification of 11 C.F.R. §110.13(c), 60 *Fed. Reg.* at 64262.

The CPD debate criteria contain exactly the sort of structure and objectivity the Commission had in mind when it approved the debate regulations in 1995. Through those regulations, the Commission sought to reduce a debate sponsor's use of its own personal opinions in selecting candidates. It was essential, in the Commission's view, that this selection process be neutral. It is consistent with the 1995 regulations for a debate sponsor to consider whether a candidate might have a reasonable chance of winning through the use of outside professional judgment. Indeed, if anything, the use of a broad array of independent professionals and experts is a way of ensuring the *decision makers* are objective in assessing the "realistic chances" of a candidate.

⁵ Although not required to do so under the Commission's regulation, CPD reduced its candidate selection criteria to writing. See Explanation and Justification of 11 C.F.R. §110.13, 60 *Fed. Reg.* at 64262.

The pool of experts used by CPD consisted of top level academics and other professionals experienced in evaluating and assessing political candidates. By basing its evaluation of candidates upon the judgment of these experts, CPD took an objective approach in determining candidate viability.⁶

Significantly, the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use. During the Commission's promulgation of §110.13, the Commission considered the staff's recommendation to specify certain ostensibly objective selection criteria in the regulations and to expressly preclude the use of "[p]olls or other assessments of a candidate's chances of winning the nomination or election." See Agenda Document #94-11 at 74 (February 8, 1994) and Explanation and Justification of 11 C.F.R. §110.13, 60 *Fed. Reg.* at 64262. The Commission unanimously rejected this approach.⁷ *Id.* Instead, the Commission decided the selection criteria choice is at the discretion of the staging organization and indicated that the use of outside professional judgment in considering candidate potential is permissible. Accordingly, the Commission cannot now tell the CPD that its employment of such an approach is unacceptable and a violation of law.

The Office of General Counsel, in effect, seemed to want to apply its own debate regulation proposal from several years ago in the instant matters. It argued the use of candidate assessments, such as CPD's "signs of newsworthiness and competitiveness," are "problematic" for many of the same reasons it argued in 1994. G.C. Report at 17. Specifically, the Office of General Counsel contended the CPD criteria contain "two levels of subjectivity: first, identifying the pool of sources involves numerous subjective judgments, and second, once the pool is identified, the subjective judgments of its members is considered." *Id.* at 18. The staff further insisted that there also is "reason to believe that the other selection criteria appear to be similarly insufficiently defined to comply with §110.13(c)'s objectivity requirement." *Id.*

⁶ That one reference in CPD's materials states that the criterion for evidence of national organization "encompasses more *subjective* indicators of a national campaign with a more than theoretical prospect of electoral success", see G.C. Report at 11 (emphasis added), is not dispositive. Indeed, the factors referred to appear to be *objective* on their face and not subjective.

- a Satisfaction of the eligibility requirements of Article II, Section I of the Constitution of the United States.
- b Placement on the ballot in enough states to have a mathematical chance of obtaining an electoral college majority
- c Organization in a majority of congressional districts in those states.
- d Eligibility for matching funds from the Federal Election Commission or other demonstration of the ability to fund a national campaign, and endorsements by federal and state officeholders.

Id. at Attachment 4, at 57.

Under the staff's proposed regulation, a debate sponsor could not look at the latest poll results even though the rest of the nation could look at this as an indicator of a candidate's popularity. This made little sense to us.

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The questions raised in the General Counsel's Report are questions which can be raised regarding *any* candidate assessment criterion. To ask these questions each and every time a candidate assessment criterion is used, however, would render the use of that criterion unworkable, contrary to the direction given by the Commission at the regulatory stage. Absent specific evidence that a candidate assessment criterion was "fixed" or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion. This approach is consistent with the Commission's Explanation and Justification which states "reasonableness is implied" when using objective criteria. Explanation and Justification of 11 C.F.R. §110.13(c), 60 *Fed. Reg.* at 64262. We are satisfied with the affidavits presented by the CPD that its "criteria were not designed to result in the selection of certain pre-chosen participants." *Id.* See G.C. Report at Attachment 4, at 121-126 (affidavit of professor Richard E. Neustadt); Attachment 4 at 43-56 (affidavit of Janet H. Brown). Significantly, we have been presented with no evidence in the factual record which threatens the veracity of these sworn affidavits.

The General Counsel's Report contains several other points which must be addressed. First, the Report's suggestion that CPD misapplied Mr. Perot's qualification for public funding reflects a misunderstanding of CPD's reasoning. See G.C. Report at 19-20. While qualification for public funding is significant, the CPB observed that as a practical matter Mr. Perot's hands would be tied since he could not contribute his own money. Thus, compared to 1992, his "realistic" chances of winning in 1996 were greatly reduced.

[In 1992], we concluded that his prospect of election was unlikely but not unrealistic. With the 1992 results and the circumstances of the current campaign before us, including Mr. Perot's funding limited by his acceptance of a *federal subsidy*, we see no similar circumstances at the present time. Nor do any of the academic or journalistic individuals we have consulted.

G.C. Report at Attachment 4, at 128 (Letter of Professor Richard E. Neustadt) (**emphasis added**). A limit on the amount of funds which can be spent by a candidate is **certainly** an objective factor which can be legitimately used by a sponsoring organization.

The General Counsel's Report also asserts the Democratic and Republican party nominees were issued "automatic" invitations to the debates as a result of their party nominations in violation of §110.13. See February 6, 1998 G.C. Report at 21-22. We find persuasive the specific denials by the CPD on this point. The CPD flatly **denies** it based its decision on this factor alone:

[I]n 1996, the CPD Board asked me to act as chairman of the advisory committee that applied the 1996 candidate selection criteria. The advisory committee convened on September 16, 1996 for the purpose of applying CPD's nonpartisan candidate selection criteria to more than 130 candidates running for the Presidency and Vice-Presidency in the 1996 general election campaign. *Although the candidate selection criteria do not require it to do so, the advisory committee independently applied the criteria to the Democratic and Republican party candidates.* After reviewing and discussing the facts and circumstances of the 1996 general election campaign, it was the unanimous conclusion of the advisory committee that, as of September 16, 1996, only President Clinton and Senator Dole have a realistic chance in 1996 of being elected President, and only Vice President Gore and Congressman Kemp have a realistic chance of being elected Vice President.

G.C. Report at Attachment 4, at 124-125 (Affidavit of Professor Richard E. Neustadt)(emphasis added). *See also id.* at 53-54 (Affidavit of Janet H. Brown)("After receipt of the data provided to the 1996 Advisory Committee and its own deliberation and discussion, *the CPD Board unanimously accepted the 1996 Advisory Committee's recommendation that only President Clinton and Senator Dole be invited to participate in CPD's 1996 Presidential debate and only Vice President Gore and Congressman Kemp be invited to participate in CPD's 1996 vice presidential debate.*")(emphasis added).

Additionally, we do not fully agree with the staff's conclusion that "'automatic' invitations are in direct violation of 11 C.F.R. §110.13(c)." G.C. Report at 21. Section 110.13(c) provides, in pertinent part, that "[f]or general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate." The phrase "whether to include" was intended to prevent a debate sponsor from *excluding* a candidate from a debate solely because the candidate was not a major party nominee. For example, a debate sponsor could not use the following as its "objective" criterion: "Only major party candidates are eligible to participate in the debate." The regulation's purpose was not to prevent a debate sponsor from issuing debate invitations to major party nominees.

The Explanation and Justification of §110.13(c) confirms this understanding of the regulation: "Under the new rules, nomination by a particular party, such as a major party, may not be the sole criterion used *to bar a candidate from participating in a general election debate.*" Explanation and Justification of 11 C.F.R. §110.13(c), 60 *Fed. Reg.* at 64262 (emphasis added). Indeed, the entire paragraph explaining this new regulatory language focuses on the fact that "the new rules do not allow a staging organization to bar minor party candidates or independent candidates from participating

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simply because they have not been nominated by a major party." *Id.* Conversely, no mention is made in the Explanation and Justification that the new rules were somehow intended to prevent the issuance of invitations to major party nominees. We believe it is consistent with the purpose of the regulation for the CPD to issue an invitation to the major party candidates in view of the "historical prominence" of, and "sustained voter interest" in, the Republican and Democratic parties. G.C. Report at Attachment 4, at 57.


Finally, the General Counsel's Report suggests the Clinton/Gore Committee and the Dole/Kemp Committee expressed an interest to either include or exclude Mr. Perot and that, as a result, the two candidate committees somehow tainted the debate selection process. G.C. Report at 20-21. Absent specific evidence of a controlling role in excluding Mr. Perot, the fact the Committees may have discussed the effect of Mr. Perot's participation on their campaigns is without legal consequence. There certainly is no credible evidence to suggest the CPD acted upon the instructions of the two campaigns to exclude Mr. Perot. To the contrary, it appears one of the campaigns wanted to include Mr. Perot in the debate. See G.C. Report at Attachment 6, at 7 ("since the start of the general election, the [Clinton/Gore] Committee fully supported the wishes of Ross Perot to be included in the CPD-sponsored presidential debates and had hoped that the CPD would make a determination to include him.") (response of Clinton/Gore '96). In fact, CPD's ultimate decision to exclude Mr. Perot (and others) only corroborates the absence of any plot to equally benefit the Republican and Democratic nominees to the exclusion of all others.

III STATUS AS A POLITICAL COMMITTEE

The FECA defines "political committee" as, in part: "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the FECA and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d) (requiring political committees to register with the Commission); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a) (requiring political committees to file specified reports with the Commission). Since CPD did not make a contribution to or an expenditure on behalf of the Committees, it was not a political committee within the meaning of 2 U.S.C. § 431(4). Accordingly, CPD was not required to register and report with the Commission.

For all the reasons set forth above, the Commission did not approve the General Counsel's recommendations with regard to alleged violations of the FECA by the Commission on Presidential Debates, Clinton/Gore '96 General Committee and the Dole/Kemp '96 Committee and their treasurers.

~~_____~~
 ✓ **Joan D. Aikens**
 Chairman


Scott E. Thomas
Vice Chairman

Lee Ann Elliott
Commissioner

Danny L. McDonald
 Danny L. McDonald
 Commissioner

John Warren McGarry
Commissioner



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

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DATE FILMED 3/10/98 CAMERA NO. 3
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EXHIBIT 4

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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT :

MUR 4987

Date Complaint Filed: March 21, 2000

Date of Notification: March 28, 2000

Date Activated: June 6, 2000

Staff Member: Delbert K. Rigby

Statute of Limitations: January 6, 2005

COMPLAINANTS:

The Reform Party of the United States of America
Patrick J. Buchanan
Pat Choate
Buchanan Reform Committee
Angela M. Buchanan

RESPONDENTS:

Commission on Presidential Debates
Paul G. Kirk, Jr., Co-Chairman of the Commission on
Presidential Debates
Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission
on Presidential Debates
Democratic National Committee and Andrew Tobias, as
treasurer
Republican National Committee and Alex Poitevint, as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(b)(21)
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.1(a)
11 C.F.R. § 110.13
11 C.F.R. § 114.1(a)(2)(x)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.4(f)

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INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

MUR 5004

Date Complaint Filed: April 24, 2000

Date of Notification: April 28, 2000

Date Activated: June 6, 2000

Staff Member: Delbert K. Rigsby

Statute of Limitations: January 6, 2005

COMPLAINANTS:

Natural Law Party
John Hagelin
John Moore

RESPONDENTS:

Commission on Presidential Debates
Paul G. Kirk, Jr., Co-Chairman of the Commission on
Presidential Debates
Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission
on Presidential Debates
Democratic National Committee and Andrew Tobias, as
treasurer
Republican National Committee and Alex Poitevint, as
treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(b)(21)
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.1(a)
11 C.F.R. § 110.13
11 C.F.R. § 114.1(a)(2)(x)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.4(f)

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INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

MUR 5021

Date Complaint Filed: May 30, 2000

Date of Notification: June 2, 2000

Date Activated: June 21, 2000

Staff Member: Delbert K. Rigsby

Statute of Limitations: January 6, 2005

COMPLAINANTS:

Mary Wolhford
Bill Wolhford

RESPONDENTS:

Commission on Presidential Debates
Paul G. Kirk, Jr., Co-Chairman of the Commission on
Presidential Debates
Frank J. Fahrenkopf, Jr., Co-Chairman of the Commission
on Presidential Debates

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(b)(21)
11 C.F.R. § 102.1(d)
11 C.F.R. § 104.1(a)
11 C.F.R. § 110.13
11 C.F.R. § 114.1(a)(2)(x)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

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I. GENERATION OF MATTERS

These matters arose from three complaints filed with the Federal Election Commission (the "Commission"). The first complaint, MUR 4987, was submitted by the Reform Party of the United States of America; Patrick J. Buchanan, a candidate for the Reform Party nomination for President of the United States; Pat Choate, Chairman of the Reform Party; Buchanan Reform Committee, the principal campaign committee of Mr. Buchanan; and Angela M. Buchanan (collectively, the "Reform Party"). The second complaint, MUR 5004, was submitted by the Natural Law Party; John Hagelin, a candidate for the Natural Law Party nomination in 2000; and John Moore, a member of the Natural Law Party's Executive Committee (collectively, the "Natural Law Party"). The third complaint, MUR 5021, was submitted by Mary Wohlford and Bill Wohlford (collectively, "Wohlford").

The three complaints allege that the criteria the Commission on Presidential Debates (the "CPD") adopted for selecting candidates to be invited to participate in debates are subjective and thus, violate 11 C.F.R. § 110.13(c). Furthermore, the Reform Party and Natural Law Party complaints allege that as a result of the subjective criteria, the CPD has violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 433 by failing to register the CPD as a political committee with the Commission, 2 U.S.C. § 441a(f) by accepting prohibited contributions as a political committee, and 2 U.S.C. § 434 by failing to file reports of receipts and disbursements with the Commission.

Additionally, the Reform Party and Natural Law Party complaints allege that the Democratic National Committee (the "DNC") and Andrew Tobias, as treasurer, and the Republican National Committee (the "RNC") and Alex Poitevint, as treasurer, have violated

2 U.S.C. § 441b(a) by accepting prohibited contributions from the CPD and 2 U.S.C. § 434 by failing to report contributions received from the CPD. The Wohlford complaint made no allegations against the DNC and the RNC.

All of the respondents in MURs 4987, 5004 and 5021 have responded to the complaints.¹

See Attachments 1 through 5.

II. FACTUAL AND LEGAL BACKGROUND

A. Law

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a); *see also* 11 C.F.R. § 114.2(b). The Act defines a contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i); *see also* 2 U.S.C. § 441b(b)(2). A contribution is also defined in the Commission's regulations at 11 C.F.R. § 100.7(a)(1). "Anything of value" is defined to include all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). The Act defines an expenditure to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i); *see also* 2 U.S.C. § 441b(b)(2).

The Commission's regulations at 11 C.F.R. § 100.7(b)(21) specifically exempt expenditures made for the purpose of staging candidate debates from the definition of contribution provided that the debates meet the requirements of 11 C.F.R. §§ 110.13 and

¹ In responding to MURs 5004 and 5021, the CPD submitted cover letters responding to the allegations and attached copies of the response that it submitted to MUR 4987.

114.4(f). Non-profit organizations described in 26 U.S.C. §§ 501(c)(3) or 501(c)(4) that do not endorse, support, or oppose political candidates or political parties may stage candidate debates.

11 C.F.R. § 110.13(a)(1). The debates must include at least two candidates, and not be structured to promote or advance one candidate over another. 11 C.F.R. §§ 110.13(b)(1) and (2).

Organizations that stage presidential debates must use pre-established objective criteria to determine which candidates may participate in the debate. 11 C.F.R. § 110.13(c). With respect to general election debates, staging organizations shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate. *Id.*

If a corporation staged a debate in accordance with 11 C.F.R. § 100.13, the expenditures incurred by that sponsoring corporation would be exempt from the definition of contribution. See 11 C.F.R. §§ 100.7(b)(21), 114.1(a)(2)(x) and 114.4(f)(1). As long as the sponsoring corporation complied with 11 C.F.R. § 110.13, other corporations may provide funds to the sponsoring corporation to defray expenses incurred in staging the debate without being in violation of the Act. 11 C.F.R. § 114.4(f)(3).

The Act defines the term "political committee" to include "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4); see also 11 C.F.R. § 100.5. Political committees are required to register with the Commission, and to report contributions received and expenditures made in accordance with the Act and the Commission's regulations. See 2 U.S.C. § 433 and 11 C.F.R. § 102.1(d); see also 2 U.S.C. § 434 and 11 C.F.R. § 104.1(a).

B. CPD's Criteria for Selecting Candidates to Participate in the 2000 General Election Debate

The CPD was incorporated in the District of Columbia on February 19, 1987, as a private, not-for-profit corporation to "organize, manage, produce, publicize and support debates for the candidates for President of the United States. *See* Attachment 1 at 5. The Co-Chairmen of the CPD are Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr. The CPD sponsored two presidential debates during the 1988 general election, three presidential debates and one vice presidential debate in 1992, and two presidential debates and one vice presidential debate in 1996. *Id.* The CPD plans to sponsor three presidential and one vice presidential debate during the 2000 general election. The CPD accepts donations from corporations and other organizations to fund these debates.

On January 6, 2000, the CPD announced its candidate selection criteria for the 2000 general election debates. *Id.* at 2. It stated that "the purpose of the criteria is to identify those candidates who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency." *Id.* The criteria are: (1) evidence of the candidate's constitutional eligibility to serve as President of the United States pursuant to Article II, Section 1 of the United States Constitution; (2) evidence of ballot access, such as the candidate appearing on a sufficient number of state ballots to have at least a mathematical chance of securing an Electoral College majority; and (3) indicators of electoral support by having a level of support of at least fifteen percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recent publicly-reported results at the time of the determination of

eligibility.² *Id.* at 9, 10. A candidate must meet all three criteria to participate in the debate. The CPD also stated that it will determine participation in the first scheduled debate after Labor Day 2000. *Id.* at 75. Furthermore, the CPD will extend invitations to participate in the vice presidential debate to the running mates of the presidential candidates qualifying for participation in the CPD's first presidential debate, and invitations to participate in the second and third debates will be based upon the same criteria prior to each debate. *Id.*

C. Complaints

1. Reform Party Complaint

The Reform Party alleges that the CPD was created to provide the Republican and Democratic Parties with control over the presidential and vice presidential candidate debates in the general election and to exclude third party candidates from those debates. The Reform Party also states that the Republican and Democratic Parties continue to control the presidential debates sponsored by the CPD. Thus, the Reform Party argues that the CPD does not satisfy the requirement that staging organizations not support or oppose political parties. 11 C.F.R. § 110.13(a). Furthermore, the complaint states that the CPD developed subjective criteria for selection of candidates to participate in the 2000 general election debate which does not satisfy 11 C.F.R. § 100.13(c) and thus, contributions made to the CPD and expenditures incurred by the CPD are prohibited contributions under 2 U.S.C. § 441b. The Reform Party also states that the CPD must register as a political committee and report its receipts and expenditures.

² Those five polling organizations are the ABC News/Washington Post; CBS News/New York Times; NBC News/Wall Street Journal; CNN/USA Today/Gallup; and Fox News/Opinion Dynamics. The CPD has also retained Frank Newport, Editor-in-Chief of the Gallup Poll, as a consultant in implementing the 2000 candidate selection criteria. *Id.* at 9, 10.

Specifically, the complaint challenges the third criterion, the level of electoral support, as subjective because it is based on the use of polls. The Reform Party criticizes the use of polling because they believe that polls have significant margins of error which make it difficult to determine the actual level of support. Furthermore, the Reform Party questions the CPD's polling methodology to take the average of five polls which may have different sample sizes, and target different populations, such as eligible voters versus eligible voters most likely to vote. The complaint also argues that in using polls, the CPD grants complete discretion to the polling organizations with respect to deciding the portion of the electorate polled, the wording of the questions, and the names of the candidates about which the polls inquire. Additionally, the Reform Party argues that the electoral support requirement of fifteen percent is three times the statutory requirement of five percent of the general election vote that presidential candidates of a political party must receive in order for the political party to receive federal funding in the next general election.

Furthermore, the complaint argues that participation in the debates provides extensive television exposure and media coverage, which increases the candidate's ability to communicate his or her message and obtain support of the voters. The Reform Party cites the example of Ross Perot, a third party candidate in 1992, who had support of 7% of the electorate in the polls prior to the debates, but received 19% of the vote in the 1992 general election.

The Reform Party complaint requests that the Commission find reason to believe that the CPD's current candidate selection criteria, particularly the level of electoral support in the national electorate criterion, violates the Act and Commission regulations because it is neither pre-existing nor objective, and direct the CPD to substitute the level of electoral support criterion

with the criterion of qualification for public funding in the general election. The complainants also request that the Commission find reason to believe that, as a result of the CPD's candidate selection criteria, the CPD is acting as an illegal, non-reporting political committee receiving and making illegal corporate contributions and expenditures in violation of the Act and the Commission's regulations. Finally, the complainants request that the Commission take action to correct and prevent continued illegal activities of the CPD.

2. Natural Law Party Complaint

The Natural Law Party argues that the CPD's sponsorship of candidate debates is intended to promote the candidates of the Democratic and Republican parties to the exclusion of the candidates of other parties, and thus, the CPD's expenditures in sponsoring the debates are expenditures by a corporation in connection with an election to public office in violation of 2 U.S.C. § 441b(a). Furthermore, the Natural Law Party complaint states that the CPD's sponsorship of the debates does not satisfy the requirement of 11 C.F.R. § 110.13(a) to be nonpartisan because the CPD was created by the Democratic and Republican parties and continues to serve their joint interest in limiting the participation of third party candidates. The complaint also argues that the CPD does not satisfy the requirement of 11 C.F.R. § 110.13(c) to use pre-established, objective criteria because the level of electoral support criterion depends upon polling results that are approximations with "substantial" margins of error and are influenced by the design of the polling questions. The Natural Law Party alleges that CPD's expenditures incurred in sponsoring the presidential debates are prohibited contributions to the DNC and RNC in violation of 2 U.S.C. § 441b(a), and any corporate contributions received by the CPD are prohibited contributions. Additionally, the complaint alleges that the CPD is a

political committee within the meaning of 2 U.S.C. § 431(4)(A), and has failed to report contributions as required by the Act. The Natural Law Party also argues that the DNC and the RNC have failed to report contributions from the CPD.

The Natural Law Party complaint requests that the Commission find reason to believe that the CPD, DNC, and RNC have violated or are about to violate 2 U.S.C. § 441b(a) by making and/or accepting prohibited contributions. The Natural Law Party also requests that the Commission find reason to believe that the CPD has violated or is about to violate 11 C.F.R. § 110.13 by staging candidate debates in a partisan manner and without pre-established, objective criteria. Additionally, the Natural Law Party requests that the Commission find reason to believe that the CPD has violated or are about to violate 2 U.S.C. § 433 by failing to register as a political committee, and the CPD, DNC, and RNC have violated or are about to violate 2 U.S.C. § 434 by failing to report contributions and expenditures. Finally, the Natural Law Party requests that the Commission enjoin the CDP's sponsorship of debates as presently proposed, require the CPD to register as a political committee, and require the CPD, DNC and RNC to make required reports.

3. Wohlford Complaint

The Wohlford complaint alleges that the CPD's criteria for selecting candidates to participate in the 2000 general election is subjective, specifically the criterion which requires a candidate to demonstrate electoral support by averaging 15% in five selected polls, because polling is neither fair nor objective. Furthermore, the Wohlford complaint states that instead of the electoral support criterion, an example of an objective criterion would be to require a candidate to have spent a certain monetary amount on his or her campaign by a specific time

prior to the first debate. Finally, the complaint states that the Commission has two choices to remedy the alleged violations, such as excluding the CPD as a sponsoring organization if they maintain the criteria now published or require that the CPD eliminate polling from its criteria and substitute "truly objective" criteria.

D. Responses

1. Responses from the CPD to the Reform Party, Natural Law Party and Wohlford Complaints

In response to the complaints, the CPD argues that no CPD Board member is an officer of either the Democratic National Committee or the Republican National Committee, and the CPD receives no funding from the government or any political party. Attachment 1 at 5. The CPD also argues that any references to its founding as a bipartisan effort was an effort to ensure that it was not controlled by any one party, not an effort by the two major parties to control CPD's operations or to exclude non-major party candidates in CPD-sponsored debates. *Id.*, footnote 6.

In regard to its candidate selection criteria, the CPD argues that the purpose of the candidate selection criteria is to identify those candidates, regardless of party, who realistically are considered to be among the principal rivals for the Presidency. Attachment 1 at 2. Moreover, in regard to the third criterion, the CPD states that it sets forth a bright line standard with respect to electoral support, which is at least 15% of the national electorate as determined by the average results of five selected national public opinion polling organizations at the time of the CPD's determination of eligibility before each debate. Attachment 1 at 3. The CPD argues that in promulgating the regulation, 11 C.F.R. § 110.13, the Commission permits the staging organization to determine the objective criteria. *Id.*

With respect to the issue of electoral support and polling, the CPD argues that the Commission has ruled in a previous matter regarding its 1996 candidate selection criteria that it is appropriate for the criteria to include a measure of candidate potential or electoral support and to use polls to measure that support. Attachment 1 at 3. Moreover, the CPD states that the five polling organizations that it will employ are well-known, well-regarded, and will poll frequently throughout the 2000 election. *Id.* at 16. The CPD also argues that because public opinion shifts, it will use the most recent poll data available before the debates. *Id.* In regard to any methodological differences among the polls, the CPD states that taking the average of five polls may reduce the random error that could come from using only one source, and averaging does not invalidate the results. *Id.* at 16. Furthermore, the CPD, citing the declaration of Dorothy Ridings, a CPD Board member, argues that requiring a level of electoral support of 15% of the national electorate is reasonable because the "fifteen percent threshold best balanced the goal of being sufficiently inclusive to invite those candidates considered to be among the leading candidates, without being so inclusive that invitations would be extended to candidates with only very modest levels of support."³ *Id.* at 14.

In regard to the Reform Party's argument that a candidate's eligibility for public funding in the general election should be used instead of electoral support of 15 % of the national electorate, the CPD states that it is opposed to a candidate's eligibility for public funding as a criterion because it is premised on the results of the previous election and not at all on the level of present public interest in the candidates running for office. Attachment 1 at 3.

³ The CPD also notes that John Anderson achieved this level of electoral support prior to the first presidential debate in 1980 and was invited by the League of Women Voters to participate in that debate. Furthermore, the CPD states that other presidential candidates, such as George Wallace in 1968 and Ross Perot in 1992, had high levels of support. *Id.* at 14.

**2. Response from the DNC to Reform Party and Natural Law Party
Complaints**

In response to the complaints, the DNC urges the Commission to dismiss the complaints against them and find no reason to believe that the DNC has violated the Act or Commission regulations. Furthermore, the DNC argues that it is independent of the CPD and that Mr. Paul Kirk, CPD Co-Chairman, who also served as DNC Chairman from 1985-1989, has held no office and played no role in the DNC since 1989. Attachment 3. The DNC also states that no DNC member, officer or employee sits on the Board of the CPD, and the DNC does not now play, nor has it ever played, any role in determining CPD's criteria for candidate selection for the debates. Attachments 2 and 3. Additionally, the DNC argues that any violation by the CPD of the Commission's debate regulations would not constitute an in-kind contribution to the DNC, which is distinct from a presidential candidate. Attachment 2.

**3. Response from the RNC to the Reform Party and Natural Law Party
Complaints**

The RNC requests that the Commission find no reason to believe that violations of the Act occurred.⁴ Furthermore, the RNC states that the complaints should be dismissed against the RNC because the CPD is not an affiliated committee or "alter ego" of the RNC. Attachments 4 and 5. The RNC acknowledges that Mr. Frank Fahrenkopf, Co-Chairman of the CPD, was Chairman of the RNC during the founding of the CPD, but the CPD was never an official or

⁴ The RNC was a respondent in MUR 4473 in which Perot '96, Inc. challenged the CPD's 1996 candidate selection criteria for participation in the debates. The RNC's response to MUR 4473 was attached to its response to MUR 4987 and incorporated by reference.

approved organization of the RNC. *Id.* Finally, the RNC states that no CPD Board Member is an officer of the RNC, and that the RNC neither organized nor controls the CPD. *Id.*

III. ANALYSIS

Based upon the available evidence, it appears that CPD has complied with the requirements of section 110.13 of the Commission's regulations governing sponsorship of candidate debates. While the Reform Party and the Natural Law Party argue that the CPD's Co-Chairmen, Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., are former Chairmen of the Democratic and Republican Parties respectively, they have not provided evidence that the CPD is controlled by the DNC or the RNC. There is no evidence that any officer or member of the DNC or the RNC is involved in the operation of the CPD. Moreover, there does not appear to be any evidence that the DNC and the RNC had input into the development of the CPD's candidate selection criteria for the 2000 presidential election cycle. Thus, it appears that the CPD satisfies the requirement of a staging organization that it not endorse, support or oppose political candidates or political parties. 11 C.F.R. § 110.13(a).

Furthermore, CPD's criteria for participation in the candidate debates appear to be pre-established, objective criteria as required by 11 C.F.R. § 110.13(c), and not designed to result in the selection of certain pre-chosen participants. The CPD's criteria for determining who may participate in the 2000 general election presidential debates consist of constitutional eligibility, appearance on sufficient state ballots to achieve an Electoral College majority, and electoral support of 15% of the national electorate based upon an average of the most recent polls of five national public opinion polling organizations at the time of determination of eligibility. The complainants acknowledge that the first and second criteria, constitutional eligibility and ballot

access, are objective, but argue that the third criterion, level of electoral support, is subjective because it is based upon polling.

The Commission has accorded broad discretion to debate sponsors in determining the criteria for participant selection. In promulgating 11 C.F.R. § 110.13(c), the Commission stated:

Given that the rules permit corporate funding of candidate debates, it is appropriate that staging organizations use pre-established criteria to avoid the real or apparent potential for a quid pro quo, and to ensure the integrity and fairness of the process. The choice of which objective criteria to use is largely left to the discretion of the staging organization. . . .

. . . . Staging organizations must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. The objective criteria may be set to control the number of candidates participating in a debate if the staging organization believes that there are too many candidates to conduct a meaningful debate.

60 Fed. Reg. 64,262 (December 14, 1995).

The CPD's candidate selection criteria have been challenged in the past. In MURs 4451 and 4473, the Natural Law Party and Perot '96, Inc. filed complaints with the Commission against the CPD regarding its 1996 candidate selection criteria. The Commission found no reason to believe that the CPD violated the law by sponsoring the presidential debates or by failing to register and report as a political committee.⁵ The Commission noted that "the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use." Statement of Reasons in MURs 4451 and 4473 at 8 (April 6, 1998). With respect to polling and electoral support, the Commission noted in MURs 4451 and 4473 that it declined to preclude the use of polling or "other assessments of a candidate's chances of winning the nomination or election" when promulgating 11 C.F.R. § 110.13. Furthermore, the Commission stated that

⁵ In those matters, the Commission rejected the Office of General Counsel's recommendations that the Commission find reason to believe that the CPD violated the law.

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QUESTIONS

questions can be raised regarding any candidate assessment criterion and "absent specific evidence that a candidate assessment criterion was "fixed" or arranged in some manner so as to guarantee a preordained result, we are not prepared to look behind and investigate every application of a candidate assessment criterion." *Id.* at 9. Finally, in MURs 4451 and 4473, the Commission referred to the Explanation and Justification for 11 C.F.R. § 110.13 which states that reasonableness is implied when using objective criteria. *Id.* In view of the Commission's prior decisions, the CPD is not required to use qualification for public funding in the general election as a debate participant criterion as the Reform Party argues.

It should be noted that the CPD used a different set of candidate selection criteria for the 1996 debates than it has proposed for the 2000 debates. However, the CPD's candidate selection criteria for 2000 appear to be even more objective than the 1996 criteria. In 1996, the CPD's candidate selection criteria were: (1) evidence of national organization; (2) signs of national newsworthiness and competitiveness; and (3) indicators of national enthusiasm or concern. With respect to signs of national newsworthiness and competitiveness, the CPD listed factors, such as the professional opinions of Washington bureau chiefs of major newspapers, news magazines and broadcast networks; the opinions of professional campaign managers and pollsters not employed by the candidates; the opinions of representative political scientists specializing in electoral politics; a comparison of the level of coverage on front pages of newspapers and exposure on network telecasts; and published views of prominent political commentators. The CPD's candidate selection criteria for 2000, which consist of constitutional eligibility, ballot access, and a level of electoral support of 15% of the national electorate based upon the average of polls conducted by five major polling organizations, appear to be relatively

easier to determine which candidates will qualify, and appear to be even more objective than the 1996 candidate selection criteria. Given this, and the fact that the Commission did not find a problem with the 1996 criteria, it appears that the CPD's candidate selection criteria for participation in the 2000 general election debates are in accordance with the requirements of 11 C.F.R. § 110.13.

Based upon the available evidence, it appears that the CPD satisfies the requirements of 11 C.F.R. § 110.13 to stage the debates, the CPD's expenditures are not contributions or expenditures subject to the Act, and the CPD does not meet the definition of a political committee subject to the registration and reporting requirements of the Act.⁶ Moreover, any contributions from corporations to the CPD would not be prohibited contributions in violation of 2 U.S.C. § 441b(a).

For the foregoing reasons, the Office of General Counsel recommends that the Commission find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr., and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 441b(a) by making expenditures in connection with a federal election, 2 U.S.C. § 441a(f) by accepting prohibited contributions from corporations or making contributions to the Democratic National Committee or the Republican National Committee, 2 U.S.C. § 433 by failing to register as a political committee, or 2 U.S.C. § 434 by failing to report contributions.

Furthermore, the Office of General Counsel recommends that the Commission find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer,

⁶ The Reform Party complaint also states generally that the CPD's expenditures will benefit the presidential candidates of the Republican and Democratic parties. Since the general election candidates for the Democratic and Republican parties have not been nominated, the complainants could not allege any violations against the committees of those candidates.

violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates. The Office of General Counsel also recommends that the Commission find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 441b(a) by accepting prohibited contributions from the Commission on Presidential Debates, or 2 U.S.C. § 434 by failing to report contributions from the Commission on Presidential Debates.

IV. RECOMMENDATIONS

1. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 4987.
2. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
3. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 4987.
4. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5004.
5. Find no reason to believe that the Democratic National Committee and Andrew Tobias, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
6. Find no reason to believe that the Republican National Committee and Alex Poitevint, as treasurer, violated 2 U.S.C. § 434, and 2 U.S.C. § 441b(a) in MUR 5004.
7. Find no reason to believe that the Commission on Presidential Debates and Paul G. Kirk, Jr. and Frank J. Fahrenkopf, Jr., as Co-Chairmen, violated 2 U.S.C. § 433, 2 U.S.C. § 434, 2 U.S.C. § 441a(f), and 2 U.S.C. § 441b(a) in MUR 5021.
8. Approve the appropriate letters.

9. Close the files in MUR 4987, MUR 5004, and MUR 5021.

Date

7/13/00


Lawrence M. Noble
General Counsel

Attachments

1. Response from the Commission on Presidential Debates to MURs 4987, 5004 and 5021.
2. Response from the Democratic National Committee to MUR 4987.
3. Response from the Democratic National Committee to MUR 5004.
4. Response from the Republican National Committee to MUR 4987.
5. Response from the Republican National Committee to MUR 5004.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: July 13, 2000

SUBJECT: MURs 4987,5004,5021-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____ Closed Session _____

CIRCULATIONS

DISTRIBUTION

SENSITIVE
NON-SENSITIVE

☒
☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

COMPLIANCE

☒

Open/Closed Letters ☐
MUR ☐
DSP ☐

STATUS SHEETS
Enforcement ☐
Litigation ☐
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐